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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1951

No. 412

NATALIE M. KALMUS,
Petitioner and Appellant Below,

vs.

HERBERT T. KALMUS, and TECHNICOLOR MOTION PICTURE CORPORATION (a corporation),
Respondents and Appellees Below.

PETITION FOR WRIT OF CERTIORARI
to the District Court of Appeal of the State of California,
in and for the Second Appellate District,
Division One Thereof
and
BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI
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Division One Thereof.

To the Honorable Fred M. Vinson, Chief Justice of the Supreme Court of the United States and the Honorable Associate Justices thereof:

Your petitioner respectfully shows:

I.

This is a suit in equity, brought in the Superior Court of the State of California, in and for the County of Los Angeles by petitioner herein against the respondent herein for support, and maintenance on the grounds of extreme cruelty, desertion, and adultery; for a dissolution of partnership; for an accounting and for appointment of receiver. (R. pages 1 to 13.)

Petitioner in addition to the foregoing asked that the common law marriage of petitioner and respondent Herbert T. Kalmus, be declared valid; that petitioner be adjudged a partner in Technicolor Motion Picture Corporation and that respondent Herbert T. Kalmus account to petitioner for all assets, profits and property of the partnership; that petitioner be awarded all of the community property, attorney's fees, in the sum of $200,000, temporary alimony of $3000 a month and court costs of $40,000 and for a restraining order preventing respondent from selling, transferring or disposing of any of the property in respondent's possession. (R. pages 12 and 13.)

Respondent filed an answer and cross-complaint denying any marriage, partnership, or indebtedness to petitioner; respondent pleaded a certain contract

dated February 19, 1945, which he alleged settled all of their community and partnership rights (R. page 54); respondent also pleaded the validity of a divorce decree nisi entered December 22, 1921, in Massachussetts in an action entitled Natalie M. Kalmus vs. Herbert T. Kalmus, No. 46894 in the Superior Court of Norfolk County, Commonwealth of Massachussetts (R. pages 13 and 14); respondent further requested a permanent injunction restraining petitioner from making any claims as hereinabove set forth and from intimidating, humiliating, molesting, threatening, harassing, annoying, vexing, or embarrassing respondent. (R. pages 20-21 and 22.)

Respondent further alleged that an actual bona fide dispute exists between petitioner and respondent concerning which respondent requested a declaration of his rights with respect to petitioner. (R. page 14.)

Prior to the trial petitioner's application for temporary support, attorney's fees, and court costs (R. page 12) had been denied. (R. pages 97-98.)

The case was set for trial for June 1, 1949. (R. page 58.)

On May 24, 1949, petitioner through her counsel filed a Notice of Motion for a Continuance of the trial of said action based on the serious illness of petitioner, in Boston, Massachusetts, where petitioner was under medical care (R. page 58) for hypertension —with question of Meniere's Disease, hepatitis (R. page 60), and that petitioner would be unable to make

the transcontinental trip to Los Angeles, without jeopardizing her health. That accompanying said Notice for a Continuance was the affidavit of Lowrey F. Davenport, M.D. of Boston, Massachussetts. (R. page 60.)

That the Notice of Motion for a Continuance further averred that another action was pending in the Superior Court of Norfolk County, Commonwealth of Massachusetts entitled, "Natalie M. Kalmus v. Herbert T. Kalmus" being case Docket No. Equity 46894 which involved the setting aside a divorce decree between the same parties, on the ground of fraud and that said action would materially effect the issues involved in the case at before the Los Angeles Superior Court. (R. pages 58 and 59.)

That an affidavit in support of the pending Massachussetts action and the issues involved was made by David H. Aronson, attorney for petitioner.

That said Notice of Motion for a Continuance was set for hearing on May 31, 1949, the day before the trial.

That petitioner's request for a continuance of the trial was denied May 31, 1949. (R. page 63.)

That on June 1, 1949 the day of the trial petitioner's attorneys Clifford Thoms and David L. Sefman, withdrew as her attorneys (R. page 64) and the Court that same day made its order granting the motion of said attorneys to withdraw as counsel for petitioner. (R. page 65.)

That the action of Natalie M. Kalmus v. Herbert T. Kalmus, Technicolor Motion Picture Corporation, No. D-370,515 proceeded to trial on June 1, 1949 in the absence of petitioner or her counsel, she being without attorney at the time. (R. pages 66 to 94, inclusive.)

That said action was tried as a default proceeding. (R. page 66.)

Judgment was rendered for respondent. (R. pages 51 to 56, inclusive.)

That ten witnesses, including respondent's attorney, testified at said trial and considerable documentary evidence was introduced by respondent against petitioner. (R. pages 66 to 94.) That the trial Court further declared in its judgment that it had jurisdiction of the equity action No. 46894 then pending in the Massachussetts Superior Court between petitioner and respondent and did adjudge the entry of the decree of divorce in that action to be a final and absolute adjudication of divorce, in full force and effect and unimpaired by any act or conduct of petitioner and respondent. (R. pages 52 and 53.)

Appeal was taken by petitioner from said judgment to the District Court of Appeal of the State of California in and for the Second Appellate District, Division One thereof.

That Court by its decision affirmed the judgment of the trial Court. (R. pages 95 to 113.)

Petitioner's request for a hearing by the Supreme Court of California was denied June 11, 1951, Carter, justice, voting for the hearing.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

That said District Court of Appeal of the State of California, Second Appellate District, Division One thereof in said case decided the federal question of substance as to a denial of due process of law to petitioner, by rendering a judgment in favor of respondents and against petitioner, at a time when petitioner was under medical care in Boston, Massachussetts and without counsel to represent her, which decision is not in accord with the general decisions of this Court, including the cases of:

Hunter v. Fairfax's Devisee, Vol. 3 U.S. (Dallas 3) 241;

Bowen v. Douglass, Vol. 2 U.S. (Dallas 2) 38;

Hurst v. Hurst, Vol. 3 U.S. (Dallas 3) 404;

Bedgisoff v. Cushman, 12 Fed. Rep. (2d) 667;

Earnshaw v. United States, 146 U.S. 60 at page 68;

Royster v. Lederle, 128 Fed. Rep. (2d) 197.

but that the specific question of a Court proceeding to trial in a domestic action of separation in the absence of the plaintiff, who was ill and under a doctor's care in another state and without counsel has not been passed upon by this Court.

That the highest Court of Colorado has reached a different conclusion from the California Appellate Court in

Hyser v. Hyser, 53 Colorado 199 at pages 202 and 203.

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the District Court of Appeal of the State of California, Second Appellate District, Division One thereof, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said District Court of Appeal of the State of California, Second Appellate District, Division One thereof had in the case numbered and entitled Civ. Nos. 17534, 17672 and 17700, Natalie M. Kalmus, appellant and Herbert T. Kalmus and Technicolor Motion Picture Corporation, a corporation, respondents, to the end that this cause may be reviewed and determined by this Court as provided by the statutes of the United States; and that the judgment herein of said District Court of Appeal of the State of California, Second Appellate District, Division One thereof be reversed by this Court, and for such other and further relief as to this Court may seem proper.

Dated, Oakland, California,
November 2, 1951.

NATALIE M. KALMUS,
Petitioner,
By R. A. ROGERS,
Counsel for Petitioner.

In the Supreme Court
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OCTOBER TERM, 1951

No.

NATALIE M. KALMUS,
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vs.

HERBERT T. KALMUS, and TECHNICOLOR MOTION PICTURE CORPORATION (a corporation),
Respondents and Appellees Below.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

OPINION OF THE COURT BELOW.

The opinion of the District Court of Appeal of the State of California, Second Appellate District, Division One, thereof, is reported in 103 A.C.A. No. 4 at pages 496 to 516 inclusive.

II.

JURISDICTION.

1. The date of the judgment to be reviewed is June 11, 1951. (R. page 114.)

2. The statutory provision which is believed to sustain the jurisdiction of this Court is Section 1257, Subdivision 3, U.S.C.A. Title 28, pages 79-80.

3. That petitioner on June 1, 1949, the day of the trial, was under the care of a physician in Boston, Massachusetts. That said physician filed an affidavit with the trial Court prior to June 1, 1949 stating that petitioner was suffering from hypertension, mild question of Meniere's Disease and hepatitis and that he did not consider petitioner's physical condition would permit the physical ordeal of a transcontinental trip and a prolonged legal trial and that such a trip and trial would jeopardize her present condition of health. (R. page 66.)

That petitioner's illness was an unavoidable accidental condition which prevented petitioner from being present at her trial.

That on June 1, 1949, the day of the trial, petitioner was without counsel to represent her, her counsel having been permitted to withdraw as her attorneys on that day. (R. pages 64 and 65.)

That prior to said trial petitioner had appeared *in propria personam* in her litigation from February 10, 1949 up to and including May 20, 1949 (R. page 57) when she engaged David L. Sefman and Clifford

Thoms (R. page 63) to attempt to secure a continuance of the trial of petitioner's action set for June 1, 1949 (R. page 112), and upon their failure so to do, they resigned as petitioner's counsel (R. pages 64-65), leaving petitioner without counsel on the day of her trial (R. pages 66 to 94) and at a time when she was ill in Boston, Massachusetts. (R. page 60.)

That the trial Court in proceeding with the trial (R. page 67) under the above circumstances, when the matters involved were support and maintenance, dissolution of partnership, accounting, injunctive relief and the respondent was asking declaratory relief from personal and financial obligations to petitioner (R. pages 20-21) was arbitrary and unjust. That petitioner's action was one for separate maintenance. (R. page 1.)

In cases of this kind, where continuances are requested as compared to ordinary actions at law, it is the policy of the law to grant such continuances in order to afford a full hearing to both parties.

That public policy requires such a hearing and when a party to such a proceeding is denied a continuance in order to have his day in Court, such denial under the above circumstances constitutes a denial of due process of law.

There is nothing in the record to show that respondent would have been injured or prejudiced by a reasonable continuance.

The trial Court's action in refusing petitioner a continuance and then proceeding to a default judg-

ment against her, was a denial to petitioner of her day in Court and the injunctive relief which the Court granted respondent as well as the Court's decision of divorce proceedings between the same parties pending in the State of Massachusetts (R. pages 52, 53, 54, 55, 56) was arbitrary, unjust and in excess of its jurisdiction and the District Court of Appeal in affirming such judgment permitted the trial Court to deprive petitioner of her marital status and substantial monetary claims without due process of law, in this that she had no opportunity to offer any evidence, both oral and documentary, in support of her claims or to deny testimony of the respondent as well as to cross-examine the respondent and his witnesses. (R. page 67.)

4. The cases believed to sustain said jurisdiction are as follows:

Hunter v. Fairfax's Devisees, 3 U.S. (Dallas 3) 241;

Bowen v. Douglass, 2 U.S. (Dallas 2) 38;

Hurst v. Hurst, 3 U.S. (Dallas 3) 404;

Bedgisoff v. Cushman, 12 Fed. Rep. (2d) 667;

Earnshaw v. United States, 146 U.S. 60 at page 68;

Royster v. Lederle, 128 Fed. Rep. (2d) 197.

III.

STATEMENT OF THE CASE.

This has already been stated in the petition under paragraph I, which is hereby adopted and made a part of this brief.

IV.

SPECIFICATIONS OF ERRORS.

The District Court of Appeal of the State of California, Second Appellate District, Division One, erred in affirming the judgment of the trial Court (R. pages 95 to 113) upon the following grounds:

(1) That said Court in affirming the denial of a continuance of the trial of petitioner's case by reason of her illness, and proceeding with said trial as a default proceeding (R. page 66) and disposing of the marital claims of petitioner as well as valuable property rights in her absence was a denial of due process of law to petitioner.

(2) That the Court erred in refusing a continuance of the trial of petitioner's case by reason of the pendency of an action to set aside a decree of divorce in Massachusetts on the ground of fraud and then proceeding to determine the validity of the facts involved in the Massachusetts action. (R. pages 52, 53, 56.)

(3) That the Court erred in permanently enjoining and restraining petitioner (R. page 55) from

"engaging in any course of conduct designed to intimidate, humiliate, harass, vex or embarrass defendant and cross-complainant" (respondent) here, (R. page 56), which said injunction makes petitioner subject to contempt proceedings for the assertion of any rights in any Court proceeding.

This injunction precludes petitioner from ever having her day in Court without, at the whim and caprice of the respondent, of being in contempt of the Superior Court of the State of California in and for the County of Los Angeles. (R. pages 55 and 56.)

(4) That the Court erred in determining the validity of the rights of petitioner in action No. 46,894 pending in the Superior Court of Massachusetts. (R. page 56.)

V.

ARGUMENT.

SUMMARY OF ARGUMENT.

Point A. Petitioner in being denied a reasonable continuance of the trial of her case, by reason of her illness, was denied due process of law, because the injunctive relief granted respondent restrains petitioner from ever attacking said default judgment without at the whim or caprice of respondent of being in contempt of the trial court.

Point B. The court erred in determining whether the Massachusetts decree of divorce was duly and regularly given in action No. 257 or whether fraud

was involved in its procurement as contended by petitioner in Massachusetts action No. 46,894. (R. pages 43 and 56.)

POINT A.

The action of petitioner being in equity for separate maintenance, dissolution of partnership, accounting, and appointment of receiver involved substantial rights entitling petitioner to a trial on the merits. The Court's denial of a reasonable continuance of the trial at petitioner's request because of her illness and then proceeding with the trial of the case in her absence and at a time when she was without counsel, was a denial of due process of law to petitioner.

In respondent's findings of fact (R. page 35), respondent admits that an "actual bona fide dispute exists between defendant and plaintiff.

It is respectfully contended that this Court has jurisdiction by reason of Section 1257, Subd. 3, U.S.C.A. Title 28, page 88, to review the decision of the District Court of Appeal of the State of California, Second Appellate District, Division One, thereof, which is as follows:

> "Final judgment or decrees rendered by the highest court of a state in which decisions could be had, may be reviewed by the Supreme Court as follows:
>
> (3) By writ of certiorari when the validity of a * * *, or when any title, right, privilege or immunity is specially set up, or claimed

under the Constitution, treaties, or statutes of, or commissions held or authority exercised under the United States."

The cases having an important bearing on petitioner's denial of due process of law are:

Herb v. Pitcairn, 324 U.S. 117;
Craig v. Harney, 331 U.S. 91;
Northern Pacific Ry. Co. v. North Dakota, 236 U.S. 585;
Hovey v. Elliott, 167 U.S. 409;
Aetna L. Ins. Co. v. Dunken, 256 U.S. 389;
Truax v. Corrigan, 257 U.S. 66;
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Smith v. Smith, 145 Cal. 615, at pages 618, 619 and 620.
Pacific Gas etc. Co. v. Taylor, 52 Cal. App. 307 at pages 308, 309, 310 and 311;
McClatchey v. Superior Court, 119 Cal. 413 at pages 416, 418, 419 and 420;
Foley v. Foley, 120 Cal. 33 at page 42;
Gray v. Hall, 203 Cal. 306, at pages 323, 324;
6 *R.C.L.* pages 544-546 and 551;
12 *Am. Jur.* page 450;
5 *Cal. Jur.* page 875, Sec. 224.

POINT B.

The Court had no jurisdiction to determine the validity of the divorce action No. 2575 in Massachusetts or the equity action No. 46,894 in the same state, to vacate and set aside the divorce decree on the grounds of fraud, for the reason that each state is the sole judge of the marital status of its citizens:

Cook v. Cook, 56 Wisconsin 195;
Hunt v. Hunt, 72 N.Y. 217.

This is also true because the state is an interested party to all actions for divorce and separation.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers by granting a writ of certiorari and thereafter reviewing and reversing said decision.

Dated, Oakland, Califonia,
November 2, 1951.

R. A. ROGERS,
Counsel for Petitioner.

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I.

There is no federal question involved in or raised by the record in this case. Petitioner did not raise in the state courts, nor preserve in the record, (1) any claim that she was deprived of due process of law or (2) any question as to the jurisdictional power of the California courts to declare valid the Massachusetts divorce decree of 1921 or (3) any question as to the correctness or effect of the injunction portion of the trial court's judgment 5

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IN THE

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Respondents and Appellees Below.

Brief in Opposition to Petition for Writ of Certiorari to the District Court of Appeal of the State of California, Second Appellate District, Division One.

The respondents file this brief in opposition to the petition for writ of certiorari heretofore filed herein.

Explanation of Appendix to This Brief and Statement of Reasons for Presenting Such Appendix.

Petitioner did not file, or cause to be filed, with the Clerk of the Supreme Court of the United States, a full or complete transcript of the record which was before the court to which the writ is asked to be issued. There has been no stipulation permitting petitioner to file, or

cause to be printed, a partial record. Respondents have procured, caused to be certified and filed with the Clerk of the Supreme Court of the United States copies of certain portions of the record omitted by petitioner, together with an excerpt from one of petitioner's briefs in the state courts. Such material respondents have printed as an appendix to this brief. Respondents have not, by this method, brought before this Honorable Court all of the record of proceedings before the California state courts in the cause. For example, respondents have not brought before the court any of the documents which were introduced in evidence at the trial of the cause [R. pp. 70, 72, 73, 77, 79, 80, 81], although such documents were not placed before this court by petitioner. However, inasmuch as petitioner does not question the sufficiency of the evidence in any respect, and since the omitted exhibits are substantially explained in the record, at the points thereof above indicated, we believe there is no necessity for respondents to bring such exhibits before this court. Again, we have not (nor has petitioner) brought before this court any of the evidence at the lengthy hearing [R. pp. 97, 98] on order to show cause although such evidence was a part of the record before the District Court of Appeal of California, and was considered by such court [R. pp. 109, 110]. We feel that petitioner's claims are so lacking in substance that it is unnecessary for respondents to bring the entire testimony before this Honorable Court.

Opinion of the Court Below.

The opinion of the District Court of Appeal of California, Second Appellate District, Division One, is reported in 103 Cal. App. 2d 405.

STATEMENT.

Several Matters, in Addition to Those Set Forth in the Statement in the Petition, Should Be Noted.

When petitioner, as plaintiff in the trial court, moved such court on May 31, 1949, to continue the trial, which was then set for June 1, 1949, she made her motion upon two grounds, viz.: (1) her claimed illnesses and claimed resultant inability to attend at the trial on June 1, 1949, and (2) the pendency in the Superior Court of Norfolk County, Massachusetts, of her action in equity to set aside the divorce decree which she, as plaintiff, had obtained in the Massachusetts court in 1921 [R. pp. 58, 59]. Her claim of illness was based entirely on the affidavit of her doctor [R. p. 60]. Such claim of illness was sharply disputed at the hearing on the motion for continuance by numerous powerful and detailed affidavits filed by respondents (Appendix to this Brief, pp. 39 to 63). In support of the second ground of her said motion for continuance, petitioner relied upon the affidavit of her attorney in the Massachusetts equity action [R. pp. 61, 62]. Such affidavit expressly states that a copy of the petition in the Massachusetts equity action is attached to such affidavit, but such copy of petition does not appear in the record presented by petitioner to this court. A copy of such petition in equity is included in the appendix to this brief at pages 36 through 38.

The said petition in equity was filed in Massachusetts December 29, 1948 [R. p. 62]. Such filing was nineteen

days after the California trial court, following a lengthy hearing, had denied suit money and alimony in this action (Appendix to this Brief p. 35).

We are somewhat at a loss to understand precisely what points petitioner seeks to make before this Honorable Court. Under her "Reasons relied on for the allowance of certiorari" (Petition for Writ of Certiorari pp. 6, 7) she makes claim simply that she has been deprived of rights and property without due process of law because the trial court, while she was *allegedly* ill, denied her motion for a continuance. In her brief in support of her petition herein she specifies four claimed errors, only one of which she asserts to have any bearing upon the matter of due process (Brief in support of Petition for Writ of Certiorari pp. 13, 14), viz.: the denial of the motion for a continuance insofar as the motion was based upon her alleged illness. The other grounds she asserts are: (1) denial of the motion for continuance insofar as the motion was based upon the pendency of her *subsequently* filed petition in equity to set aside the Massachusets divorce decree of 1921; (2) claimed lack of jurisdictional power in the California courts to pronounce the Massachusetts divorce decree valid, and (3) the incorporation in the judgment of the trial court of an injunction prohibiting petitioner from continuing a course of conduct designed to intimidate, vex and harass the respondent Herbert T. Kalmus.

ARGUMENT.

I.

There Is No Federal Question Involved in or Raised by the Record in This Case. Petitioner Did Not Raise in the State Courts, nor Preserve in the Record, (1) Any Claim That She Was Deprived of Due Process of Law or (2) Any Question as to the Jurisdictional Power of the California Courts to Declare Valid the Massachusetts Divorce Decree of 1921 or (3) Any Question as to the Correctness or Effect of the Injunction Portion of the Trial Court's Judgment.

(a) The Question of Due Process Was Neither Presented nor Argued in the California Courts.

Petitioner has brought before this Honorable Court none of the briefs filed in the California courts.* The only reflection in the record of the questions of law raised by petitioner in the California courts is the decision of the District Court of Appeal of California [R. pp. 95 through 113].

It will be observed from the decision of the District Court of Appeal of California that petitioner did not contend that the denial of her motion for a continuance was anything more than "an abuse of discretion" [R. p. 99].

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*Under present California Appellate practice there is no provision for bills of exception. Claimed errors are specified in appellant's opening brief—see Rule 15 of Rules on Appeal adopted by the Judicial Council of the State of California. Said rules are set forth *in extenso* in 36 Cal. 2d pp. 1 through 39.

(b) The Claim That the California Courts Were Without Jurisdictional Power to Pronounce the Massachusetts Divorce Valid Was Not Raised in the California Courts.

In the California courts petitioner affirmatively stated that the California courts were empowered to declare the Massachusetts divorce decree to be valid (Appendix to this Brief, p. 64.) Her concession in that regard is reflected in the decision of the District Court of Appeal of California [R. p. 102].

(c) The Claim That the California Courts Erred in Granting Injunctive Relief, or That the Injunction Somehow Prevents Petitioner From Having Her Day in Court, Was Not Raised in the California Courts.

It will be observed from the opinion of the District Court of Appeal of California [R. pp. 95 through 113] that petitioner made no contention in that court that the injunction was not properly granted and that she there made no claim that, by the injunction, she was or is enjoined from proceeding in her Massachnsetts action. In fact she is not so enjoined [R. pp. 55, 56].

The law is perfectly clear that this court will not consider questions which were not raised or argued in the State courts or preserved in the record.

Bailey v. Anderson, 326 U. S. 203, 66 S. Ct. 66, 90 L. Ed. 3;

Congress of Industrial Organizations v. McAdory, 325 U. S. 472, 65 S. Ct. 1395, 89 L. Ed. 1741;

McGoldrick v. Compagnie Generale Transatlantique, 309 U. S. 430, 60 S. Ct. 670, 84 L. Ed. 849;

American Surety Co. v. Baldwin, 287 U. S. 156, 53 S. Ct. 98, 77 L. Ed. 231;

Hulbert v. City of Chicago, 26 S. Ct. 617, 202 U. S. 275, 50 L. Ed. 1026;

Roller v. Murray, 34 S. Ct. 902, 234 U. S. 738, 58 L. Ed. 1570;

Edward Hines Yellow Pine Trustees v. Martin, 268 U. S. 458, 45 S. Ct. 543, 69 L. Ed. 1050;

Zayas v. Lothrop Luce & Co., 231 U. S. 171, 34 S. Ct. 108, 58 L. Ed. 172;

Young v. Masci, 289 U. S. 253, 53 S. Ct. 599, 77 L. Ed. 1158;

Duignan v. United States, 274 U. S. 195, 47 S. Ct. 566, 71 L. Ed. 996.

II.

Petitioner Was Not Deprived of Due Process of Law by Denial of Her Motion for a Continuance.

The only basis asserted by petitioner in support of the claim that she was deprived of due process of law is that petitioner was ill and, consequently, unable to attend at the trial on the date set therefor, and, *ergo*, that the court deprived her of due process when it denied her motion for a continuance. A fundamental fault of such contention is that upon an adequate and convincing showing that petitioner was in good health and engaged in many and strenuous pleasure pursuits and activities all during the month immediately preceding the trial date (Appendix to this brief, pp. 39 through 63), the court found petitioner's claim of illness to be false and so denied her motion for continuance [R. p. 63]. Denial of petitioner's motion for a continuance as a result of such finding certainly did not deprive her of due process of law.

This court, of course, has authority to scrutinize the evidence once a constitutional question is asserted before it and we have, therefore, caused to be included in the appendix to this brief the evidence rebutting the claim of illness made by petitioner in the trial court (Appendix to this brief, pp. 39 through 63). Perhaps the inclusion of such evidence was an unnecessary precaution inasmuch as this court has said that it is accustomed to adopt the result of the State courts' examination of the record.

> *Pennekamp v. State of Florida,* 328 U. S. 331, 66 S. Ct. 1029, 90 L. Ed. 1295.

In this case the District Court of Appeal of California has stated in clear and concise terms a summary of the evidence upon which petitioner's motion for a continuance was denied and has stated its conclusion that the continuance was properly refused [R. pp. 99, 100, 101].

III.

California Courts Were Authorized to Pronounce the Validity of the Massachusetts Decree of Divorce.

The law is clear that the courts of one state are empowered to declare valid the judgments of the courts of other states. Indeed, it is only by such judicial recognition that the Full Faith and Credit Clause of Article 4, Section 1, of the Constitution of the United States can be carried out with respect to judicial proceedings.

That the courts of one state may consider and determine the validity of the judgments of the courts of other states

is made plain in *Williams v. North Carolina,* 325 U. S. 226, 65 S. Ct. 1092, 89 L. Ed. 1577.

Indeed, so far-reaching is the rule that when the courts of Florida declare to be valid a decree rendered by the courts of Nevada the pronouncement of the Florida courts will be held *res judicata* upon the subject if the issue is subsequently raised in the Federal courts.

> *Bliss v. Bliss* (C. C. A. for D. C., 1935), 81 F. 2d 411, cert. den. 297 U. S. 715, 56 S. Ct. 592, 80 L. Ed. 1001.

Petitioner has not seen fit to bring before this Honorable Court any portion of the record reflecting what her evidence might be in support of her claim that the Massachusetts divorce decree was invalid. None the less, such evidence was before the trial court upon a hearing on an order to show cause and was before the District Court of Appeal of California when such court rendered its decision [R. p. 110] and such court held that the evidence justified the trial court in finding that none of the things were true which petitioner asserted as invalidating the Massachusetts decree of divorce [R. p. 110].

From the record of testimony at the trial, which petitioner has brought before this Honorable Court [R. pp. 82, 83], it will be observed that respondents adduced uncontradicted evidence that petitioner's claims of invalidity of the Massachusetts divorce decree were false and untrue.

IV.

The Injunction Portions of the Judgment Do Not Deprive Petitioner of Her Day in Court.

In the first place, the injunctive provisions of the judgment do not purport to prohibit petitioner from pressing the trial of the Massachusetts equity action whereby she seeks to set aside the Massachusets divorce decree [R. pp. 55, 56], nor from proceeding therein so far as the Massachusetts courts will permit her. She may do those things without fearing that she has thereby committed contempt of the California courts.

In the next place, petitioner has had her day in court. That day was the day of trial in the California court when the California trial court declared the Massachusetts divorce decree to be valid. We submit the obvious: that one's right to a day in court does not constitute a right to one day in one court and one day in another. Neither we apprehend, will it ever be held that one has not had his day in court when, although formally advised of the trial date in his action, he elects to sulk elsewhere while the court is hearing the evidence and deciding the case.

Wherefore, it is respectfully suggested that the petition for writ of certiorari should be denied.

Respectfully submitted,

FRANK B. BELCHER,

Attorney for Respondents and Appellees Below.

APPENDIX.

(Title of Court and Cause.)

No. D-370515.

ANSWER OF DEFENDANT HERBERT T. KALMUS

Comes now the defendant HERBERT T. KALMUS and severing from his codefendants herein and answering plaintiff's complaint for himself and for himself alone, admits, denies, and alleges as follows:

ANSWER TO THE ALLEGED FIRST CAUSE OF ACTION.

I.

Defendant here answering has no information or belief upon the subject of the allegations contained in paragraphs II and IV thereof sufficient to enable him to answer the same, and basing his denial upon the ground of the want of such information and belief, denies generally and specifically each and every allegation therein contained.

II.

Answering paragraph V thereof, this answering defendant admits that Herbert T. Kalmus and Natalie M. Kalmus were married on July 23, 1902; alleges in this connection that on December 22, 1921, the Superior Court of Norfolk County, of the Commonwealth of Massachusetts, duly and regularly made, rendered, and gave a decree nisi in that certain action entitled, "Natalie M. Kalmus v. Herbert T. Kalmus," Number 2575 in the files of said Court; that in and by the terms of said decree nisi, it was ordered that Natalie M. Kalmus, plaintiff therein, be divorced from the bonds of matrimony between her and defendant Herbert T. Kalmus, and further that said decree should

become absolute after the expiration of six months from the entry thereof unless the court should have, for sufficient cause upon application of any party interested, otherwise ordered. In this connection, this answering defendant further alleges that on June 23, 1922, said decree nisi became absolute in accordance with the statutes in such cases made and provided. That no appeal has ever taken from said judgments or either of them and that the same are now, and for many years last past have been, final, and that by reason thereof, said Herbert T. Kalmus and Natalie M. Kalmus were and ever since the 23rd day of June, 1922 have been divorced.

III.

Answering paragraph VI thereof, this answering defendant denies that plaintiff and this defendant remarried in the City of New York, State of New York, during or about February of 1923 or at any other time or place, or at all. Alleges in this regard that ever since June 23, 1922 said parties have been and now are divorced persons and have never remarried.

IV.

Answering paragraph VII thereof, this answering defendant admits that from July 23, 1902 to December 22, 1921, the parties hereto were husband and wife; denies generally and specifically each and every allegation contained in said paragraph VII not herein specifically admitted; denies that at any time since December 22, 1921, the plaintiff and this answering defendant have been or now are husband and wife.

V.

Answering paragraph VIII thereof, this answering defendant denies that plaintiff and defendant separated on or

about June 6, 1944 but admits that said parties have lived separate and apart ever since June 6, 1944. In this connection, this answering defendant alleges that the plaintiff and defendant separated prior to December 22, 1921 and have ever since lived separate and apart insofar as any marital relation is concerned.

VI.

Answering paragraph IX, this answering defendant admits that he has a net worth of approximately $1,000,000.00, together with a contingent interest in a trust to which defendant may or may not succeed, depending upon the fulfullment of certain conditions. Admits that defendant is a stockholder in Technicolor, Inc., but alleges in this regard that defendant's holdings are less than two percent of the issued and outstanding capital stock of said corporation. Admits that defendant owns all of the issued and outstanding stock of Gurney Properties, Inc.; admits that defendant owns various corporate securities and stocks as a part of his capital investments; admits that the defendant controls and elects the Board of Directors of Gurney Properties, Inc.; alleges that the true name of Gurney Western Properties, Inc., is Gurney Properties, Inc.

Denies generally and specifically each and every allegation contained in said paragraph IX not herein specifically admitted.

VII.

Answering paragraph X thereof, this answering defendant admits that he has a gross income of approximately $120,000.00 to $140,000.00 per year prior to authorized income tax deductions and prior to the payment of income taxes thereon. In this connection, defendant alleges that, after the payment of income taxes, expenses

allowed as income tax deductions, and payments to this plaintiff, his net income over the past four years has averaged less than approximately $25,000.00 per year. Admits that most of defendant's gross income is from salary and remuneration for his personal services as an officer and employee of Technicolor, Inc., Technicolor Motion Picture Corporation, and Technicolor, Ltd. Admits that the three corporations above named pay certain traveling, living expenses away from home, and other allowable business expenses of this answering defendant. Denies generally and specifically each and every allegation contained in said paragraph X not herein specifically admitted or alleged.

VIII.

Denies generally and specifically each and every allegation contained in paragraph XI thereof except that defendant admits that annually, over a period of three years, defendant here answering has given to the Town of Barnstable, Massachusetts, for the purpose of a recreation park, lands of the approximate value of $15,000.00 during each of said years, and except for the usual and customary gifts and charitable contributions of no substantial amounts.

IX.

Answering paragraph XII thereof, defendant admits that plaintiff has engaged the services of attorneys to institute and prosecute this action. Defendant hereby refers to the preceding allegation herein relative to his net worth and income and by such reference incorporates same herein to the same extent as though here repeated at length. Said defendant has no information or belief sufficient to enable him to answer certain of the allegations of paragraph XII and basing his denial upon the ground of the want of such

information and belief, denies that plaintiff has not paid her attorneys. Denies generally and specifically each and every allegation contained in said paragraph XII not herein specifically admitted or alleged or denied for lack of information and belief.

X.

Answering paragraph XIII thereof, this defendant denies generally and specifically each and all of the allegations thereof preceding the lettered paragraphs (a) to (k) inclusive.

Denies generally and specifically each and every allegation contained in paragraph XIII (a) except that defendant admits that ever since the divorce between plaintiff and defendant in December, 1921, defendant on many, frequent, and repeated occasions has entertained various women friends and acquaintances, both at his home and residence in Centerville, Massachusetts, and at his successive houses in California, including the Bel Air house purchased in 1935, and alleges that defendant has felt free to, and has, entertained women friends and acquaintances whenever and wherever he so wished to do. Denies that any of said occasions were for immoral purposes or that defendant engaged in immoral or illicit relations with said women or any of them.

Denies generally and specifically each and every allegation contained in paragraph XIII (b).

Denies generally and specifically each and every allegation contained in paragraph XIII (c).

Denies generally and specifically each and every allegation contained in paragraph XIII (d).

Denies generally and specifically each and every allegation contained in paragraph XIII (e).

Denies generally and specifically each and every allegation contained in paragraph (f) except that defendant admits and alleges that in the latter part of 1944, counsel for plaintiff, acting for and on behalf of plaintiff, intimated and hinted that perhaps plaintiff could set aside the divorce decree between plaintiff and this answering defendant and that perhaps plaintiff might claim she was the common-law wife of this answering defendant, and that upon said occasion, both this defendant and his counsel advised the then counsel for plaintiff that such claims were wholly false, untrue, and without foundation and that plaintiff was not the wife of this answering defendant and had not been the wife of this answering defendant at any time since the divorce in 1921, and that she had no property rights or other right, title, or interest in or to any property or assets owned or possessed by this answering defendant.

Denies generally and specifically each and every allegation contained in paragraph XIII (g).

Denies generally and specifically each and every allegation contained in paragraph XIII (h).

Denies generally and specifically each and every allegation contained in paragraph XIII(i).

Denies generally and specifically each and every allegation contained in paragraph XIII (j).

XI.

Denies generally and specifically each and every allegation contained in paragraph XIV thereof except that defendant admits that he may from time to time leave the State of California for the purpose of returning to his residence in Massachusetts and for the purpose of going

to various points as his business interests and employment may require; that defendant expects to be in the State of California from time to time and will render himself amenable to any lawful orders of this court.

For Answer to the Alleged Second Cause of Action Contained in Plaintiff's Complaint, This Answering Defendant Admits, Denies, and Alleges as Follows:

I.

This answering defendant hereby refers to the admissions, denials, and allegations contained in his answer to paragraphs I to XII, both inclusive, and paragraph XIV of the alleged first cause of action set forth in plaintiff's second amended complaint and by such reference incorporates herein the admissions, denials, and allegations of his answer to said paragraphs to the same extent as though same were here set forth at length.

II.

Denies generally and specifically each and every allegation contained in paragraph II in said alleged second cause of action except that defendant admits that he has not dwelt or cohabited with plaintiff as husband and wife since the time of the divorce between said parties in December of 1921.

For Answer to the Alleged Third Cause of Action Contained in Plaintiff's Complaint, This Answering Defendant Admits, Denies, and Alleges as Follows:

I.

This answering defendant hereby refers to the admissions, denials, and allegations contained in his answer to paragraph I to XII, both inclusive, and paragraph XIV

of the alleged first cause of action set forth in plaintiff's complaint and by such reference incorporates herein the admissions, denials, and allegations of his answer to said paragraphs to the same extent as though same were here set forth at length.

II.

Denies generally and specifically each and every allegation contained in paragraph II of said alleged third cause of action.

III.

Denies generally and specifically the commission of any acts of adultery as alleged in said complaint.

For Answer to the Alleged Fourth Cause of Action Contained in Plaintiff's Complaint, This Answering Defendant Admits, Denies, and Alleges as Follows:

I.

This answering defendant hereby refers to the admissions, denials, and allegations contained in this answer to paragraph I to VII, both inclusive, IX to XII, both inclusive, and paragraph XIV of the alleged first cause of action set forth in plaintiff's complaint and by such reference incorporates herein the admissions, denials, and allegations of his answer to said paragraphs to the same extent as though same were here set forth at length.

II.

Denies generally and specifically each and every allegation contained in paragraph II of said alleged Fourth Cause of Action except that defendant admits that throughout the major portion of the time from 1928 to date, plaintiff has been employed by Technicolor Motion

Picture Corporation or its affiliate, Technicolor, Ltd., or their customers, and has rendered services to said corporations and their customers during said period as an employee thereof, for which services plaintiff has received, retained, and aaccepted payment.

III.

Denies generally and specifically each and every allegation set forth in paragrah III of said alleged fourth cause of action.

IV.

Denies generally and specifically each and every allegation contained in paragraph IV of said alleged fourth cause of action except that defendant admits that he has never rendered any partnership accounting to plaintiff, no such partnership having ever existed.

V.

Denies generally and specifically each and every allegation set forth in paragraph V of said alleged fourth cause of action.

VI.

Denies generally and specifically each and every allegation set forth in paragraph VI of said alleged fourth cause of action.

VII.

Denies generally and specifically each and every allegation set forth in paragraph VII of said alleged fourth cause of action.

For a Further, Separate, and Second Defense to the Alleged Fourth Cause of Action Set Forth in Plaintiff's Complaint, Said Defendant Alleges:

I.

That said alleged fourth cause of action is barred by the provisions of Section 343 of the Code of Civil Procedure of the State of California.

For a Further, Separate, and Third Defense to the Alleged Fourth Cause of Action Set Forth in Plaintiff's Complaint, Said Defendant Alleges:

I.

That said alleged fourth cause of action is barred by the provisions of Subdivision 1 of Section 339 of the Code of Civil Procedure of the State of California.

For a Further, Separate, and Fourth Defense to Plaintiff's Complaint and to Each and Every Alleged Cause to Action Therein Set Forth, This Defendant Alleges:

I.

That heretofore and to-wit: on or about February 19, 1945, plaintiff Natalie M. Kalmus and defendant Herbert T. Kalmus made, executed, and entered into a certain Contract or Agreement in writing, a full, true, and correct copy of which, marked Exhibit "A", is attached hereto and made a part hereof as though herein set forth at length.

II.

That said Agreement of February 19, 1945, Exhibit "A" attached hereto, was made and intended as, and

constituted and is, a full and complete compromise, satisfaction, and settlement of all claims, demands, and liabilities of every nature and description whatsoever, which plaintiff herein has or had against defendant Herbert T. Kalmus except for such obligations as specifically arose under said Agreement, and except as to the obligations of said defendant Herbert T. Kalmus under the Massachusetts decree of divorce; that in and by the terms of said Agreement, plaintiff released defendant of and from any right, title, and interest in and to any and all property and assets, of every kind and nature, owned by defendant or in his possession or control or standing in his name, except as to certain personal property listed in a schedule annexed to said Contract and designated as Schedule "A".

III.

That in and by the terms of said Contract of February 19, 1945, Exhibit "A" attached hereto, plaintiff Natalie M. Kalmus undertook and agreed that she would not impose, or attempt to impose, any restraint upon the defendant, or interfere with defendant in any way, or molest him in any manner whatever; in and by the terms of said Agreement, plaintiff further agreed that she recognized that, so far as she was concerned, the defendant was and is entitled to complete freedom in his relations and affairs.

IV.

That in and by the terms of said Agreement, it was further provided that plaintiff would not make any further claim on defendant for support, maintenance, or alimony or for any other payments or property beyond that provided in the Massachusetts divorce decree and the

provisions of said contract of February 19, 1945, Exhibit "A" hereto attached.

V.

That defendant has duly performed all the conditions on his part to be performed under the terms of said Contract of February 19, 1945.

VI.

That plaintiff has kept and retained all consideration paid to and received by her pursuant to the terms of said Agreement of February 19, 1945, Exhibit "A" attached hereto; that said Contract has never been rescinded; that no part of the consideration given and paid by defendant pursuant to and under said Contract, has ever been returned to the defendant or any offer of return thereof made; that said Contract is still in full force and effect.

For a Further, Separate, and Fifth Defense to the Alleged Fourth Cause of Action Set Forth in Plaintiff's Complaint, This Defendant Alleges:

I.

That on or about February 19, 1945, plaintiff Natalie M. Kalmus and defendant Herbert T. Kalmus made, executed, and entered into an Agreement in writing, a full, true, and correct copy of which, Marked Exhibit "A", is attached hereto and made a part hereof; that in and by the terms of said Agreement, plaintiff Natalie M. Kalmus settled, compromised, and released all past, present, and future claims, demands, and liabilities, of every nature and description whatsoever, against the defendant Herbert T. Kalmus, except those arising out of his obligations under said agreement and except his obligations to

pay alimony under the decree of divorce rendered by the Massachusetts Court.

II.

At no time until shortly prior to the execution of said Agreement of February 19, 1945, did plaintiff herein ever alleged, claim, assert, or contend to defendant that a partnership existed, or ever did exist, between plaintiff and defendant; nor at any time prior to July 21, 1948 did plaintiff ever demand a partnership accounting of said defendant. That on July 21, 1948, plaintiff commenced in the Superior Court of the State of California, in and for the County of Los Angeles, an action numbered D-364,392 in the files of the County Clerk of said County, in which said action Natalie M. Kalmus, plaintiff herein, was plaintiff, and Herbert T. Kalmus, defendant herein, was a defendant; that in and by said action said plaintiff Natalie M. Kalmus sought a partnership accounting from this defendant for the first time. On December 22, 1921 the Superior Court of the Commonwealth of Massachusetts, in and for the County of Norfolk, duly and regularly made, rendered, and gave a decree nisi of divorce dissolving the bonds of matrimony between plaintiff Natalie M. Kalmus and this answering defendant; thereafter, and on June 23, 1922, said decree of divorce became final pursuant to the laws and statutes in such cases made and provided in the Commonwealth of Massachusetts, and that ever since December 22, 1921, plaintiff Natalie M. Kalmus and defendant Herbert T. Kalmus have been and now are divorced persons and have never remarried. In connection with said divorce, a Property Settlement Agreement was made and entered into and a division of property was then had between plaintiff Natalie M. Kal-

mus and defendant Herbert T. Kalmus. At the time of said divorce between said parties, no claim of the existence of a partnership between plaintiff and this defendant was advanced or asserted by this plaintiff. During the period from July 23, 1902, the date on which plaintiff Natalie M. Kalmus and defendant Herbert T. Kalmus were married, to the present time, the defendant has received, used, conveyed, and dealt in and with various properties and assets as his own and without knowledge or notification of any claim or contention on the part of plaintiff that a partnership had ever existed between plaintiff and this defendant until shortly prior to the execution of the Agreement of February 19, 1945 and except as to said Action Number D-364,392 filed July 21, 1948, as hereinbefore alleged.

III.

That by reason of the foregoing matters, facts, and things, the Fourth Alleged Cause of Action set forth in plaintiff's complaint is barred by laches.

Wherefore, this answering defendant prays that plaintiff take nothing herein; that defendant have and recover his costs of suit; and for such other and further relief as to the court may seem meet and just.

JENNINGS & BELCHER

By: FRANK B. BELCHER

Attorneys for Defendant
Herbert T. Kalmus.

EXHIBIT "A"

This Agreement is made this 19th day of February, 1945, by and between Herbert T. Kalmus, of Centerville, Massachusetts, and Natalie M. Kalmus, of Los Angeles, California.

Whereas on December 22, 1921, Natalie M. Kalmus obtained a divorce decree nisi against Herbert T. Kalmus in the Superior Court of Norfolk County, Massachusetts, which decree became absolute on June 22, 1922, and is now in full force and effect, and

Whereas at the time of said divorce, said Herbert T. Kalmus delivered to or for the account of Natalie M. Kalmus, in full and complete settlement and satisfaction of all his obligations to her, certain household effects, a $25,000 insurance policy, the sum of $5,000, 1,000 shares of stock of the Technicolor Company, negotiable bonds of a total principal amount of $25,000 placed in trust and later delivered to her, and

Whereas in addition said divorce decree provided for the payment of alimony to her in the sum of $7,500 per year, which payments have been duly made to date, and

Whereas Natalie M. Kalmus is now claiming she should receive additional money and property from Herbert T. Kalmus and damages for alleged slander, defamation of character, and injury to health, all of which claims are denied by Herbert T. Kalmus, and

Whereas the parties desire to make a full complete settlement at this time and by this agreement of all claims of said Natalie M. Kalmus and her estate against said Herbert T. Kalmus and his estate of every nature and description whatsoever,

Now, Therefore, in consideration of the premises and of the agreements and covenants herein contained, it is mutually agreed and covenanted as follows:

Herbert T. Kalmus agrees and covenants that:

1. He will pay to said Natalie M. Kalmus the sum of Thirty-six Thousand Six Hundred Twenty-five Dollars ($36,625) coincident with the delivery of this agreement, of which amount Eleven Thousand Six Hundred Twenty-Five Dollars ($11,625) is in repayment of loans heretofore made to him by said Natalie M. Kalmus and Twenty-Five Thousand Dollars ($25,000) is in full and complete satisfaction and settlement of all claims, demands and liabilities, past, present and future, of the said Natalie M. Kalmus, her heirs, executors, administrators and assigns, against the said Herbert T. Kalmus and his heirs, executors, administrators and assigns, of every nature and description whatsoever, except those arising out of his obligations under this agreement and except alimony of $7,500 a year under said divorce decree.

2. He will not at any time take or prosecute any action or cause or permit any action to be taken or prosecuted on his behalf to vacate or modify the decree entered in the Superior Court for Norfolk County, Massachusetts, in the divorce action of the said Natalie M. Kalmus against him, No. 2575 on the divorce docket of said court, hereby covenanting that no such action has been taken prior to the delivery hereof and that he knows of no valid or proper ground on which any such action could be based.

3. His estate shall and will pay to the said Natalie M. Kalmus the sum of Seventy-five Hundred Dollars ($7,500) a year, payable in monthly installments of Six

Hundred Twenty-five ($625) each, for such period after his death as the said Natalie M. Kalmus shall live.

4. With respect to the private life of said Natalie M. Kalmus, he will not impose or attempt to impose any restraint upon her or interfere with her in any way or molest her in any manner whatever, recognizing that so far as he is concerned she is entitled to complete freedom in her relations and affairs.

5. He will not as an officer of or general manager of the employer of said Natalie M. Kalmus make or cause to be made any unreasonable or arbitrary demands, orders or charges calculated to annoy or molest the said Natalie M. Kalmus in her work, it being understood that nothing herein contained shall require him to act contrary to his duties and responsibilities as an officer or general manager of the employer or employers of said Natalie M. Kalmus.

6. Within sixty (60) days from the date hereof, he will ship to Natalie M. Kalmus at 1220 Sunset Plaza Drive, Los Angeles, California, at his own expense, the personal property in the premises at Centerville, Massachusetts, and Bel Air, California listed on the schedule annexed hereto and marked "A".

7. On or before March 1, 1945, he will pay to Nutter, McClennen & Fish, of Boston, Massachusetts, attorneys for the said Natalie M. Kalmus, attorneys' fees in the amount of Seven Thousand Five Hundred Dollars ($7,500), for their services rendered to her in connection with the settlement of the controversies between him and the said Natalie M. Kalmus, and the disbursements incurred by them in connection therewith.

8. In addition to the payments hereinabove provided for, he will also pay to said Natalie M. Kalmus commenc-

ing December 8, 1945 Eight Thousand Dollars ($8,000) per year, payable in monthly installments of Six Hundred and Sixty-six and 66/100 Dollars ($666.66) each for the balance of the term of her present contract of employment with Technicolor Motion Picture Corporation. At the termination of such contract of employment he will also pay to her Eight Thousand Dollars ($8,000) per year, payable in monthly installments of Six Hundred and Sixty-six and 66/100 Dollars ($666.66) each during her active employment under the terms of any new or additional contract of employment she may make with Technicolor Motion Picture Corporation less any amounts she may at any time during the term of her active employment receive as a pension under a pension plan. Anything herein to the contrary nothwithstanding, he shall not be obligated to make any payments or cause any payments to be made to her under this paragraph 8 beyond a period of three (3) years beginning December 8, 1945.

9. He hereby accepts the provisions herein made for him in full and complete satisfaction and settlement of, and in lieu of, all past, present and future claims, demands and liabilities of every nature and description whatsoever against said Natalie M. Kalmus, except those arising out of her obligations under this agreement.

Said Natalie M. Kalmus agrees and covenants that:

10. She will not at any time take or prosecute any action or cause or permit any action to be taken or prosecuted on her behalf to vacate or modify the decree of divorce entered in the said divorce action described in paragraph numbered 2 hereof, hereby covenanting that no such action has been taken prior to the delivery

hereof and that she knows of no valid or proper grounds on which any such action could be based.

11. With respect to the private life of said Herbert T. Kalmus, she will not impose or attempt to impose any restraint upon him or interfere with him in any way or molest him in any manner whatever, recognizing that so far as she is concerned he is entitled to complete freedom in his relations and affairs. She specifically will not enter or attempt to enter upon the aforesaid premises at Centerville, Massachusetts, and Bel Air, California, unless and until, in case of either property, it is no longer owned by Herbert T. Kalmus or occupied by him or owned by a corporation controlled by him.

12. She acknowledges that the aforesaid divorce decree is valid and in full force and effect; and that she is not the common law wife of Herbert T. Kalmus. She and her heirs, executors, administrators and assigns, will at no time take or prosecute any action or claim, or cause or permit any action or claim to be taken or prosecuted inconsistent with the acknowledgments in the last preceding sentence. She will not make any further claim on him for support, maintenance or alimony or for any other payments or property beyond that provided in the aforesaid divorce decree and beyond the provisions of this agreement.

13. With respect to certain letters heretofore returned by Natalie M. Kalmus to Herbert T. Kalmus on or about June 14, 1944, she represents and warrants that the letters so returned constituted all of the letters taken from the possession of Herbert T. Kalmus, and that she has no additional copies thereof, and that she knows of no additional copies, photostatic or otherwise.

14. That in further consideration of the payment to her of the sum of Twenty-five Thousand Dollars ($25,000) paid to her by Herbert T. Kalmus pursuant to paragraph 1 of this agreement, (a) she hereby accepts the provisions herein made for her in full and complete satisfaction and settlement of, and in lieu of, all past, present and future claims, demands and liabilities of every nature and description whatsoever against Herbert T. Kalmus, except those arising out of his obligations under this agreement; (b) she will not in any way demand contribution from him or claim any interest in his property except as herein provided; (c) she expressly releases to him all her right, title and interest in and to any and all kind and nature excepting those HTK property and assets of every ∧ specifically men- NK tioned in paragraph 6 hereunder, owned by him or in his possession or control or standing in his name; and she acknowledges that she has and has had no right, title or interest in or to the same or any part thereof; and (d) she hereby expressly transfers to him all shares of stock standing in her name endorsed by her and in his possession or control.

15. Both parties hereto agree that the laws of the Commonwealth of Massachusetts shall be applied in determining any and all questions which may arise in relation to this agreement.

Both parties further agree that this agreement, and another agreement of even date between the same parties executed and delivered simultaneously herewith, a copy of

which is annexed hereto, contain the entire agreement between the parties and that no representation, promise or agreement not expressed in said agreements has been made by either of them.

In Witness Whereof, the parties have hereunto set their hands and seals the day and year first above written. Executed in duplicate.

NATALIE M. KALMUS
HERBERT T. KALMUS

Signed in the presence of:

LEON COHEN
DAVID S. SHATTUCK

State of California, County of Los Angeles—ss.

On this 19 day of February, 1945, before me, Florence Harris, a Notary Public in and for said county and state, residing therein, duly commissioned and sworn, personally appeared Herbert T. Kalmus, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

FLORENCE HARRIS
Notary Public in and for said
county and state.

My Commission expires October 14, 1945

(Notarial Seal)

State of California, County of Los Angeles—ss.

On this 19 day of February, 1945, before me, Florence Harris, a Notary Public in and for said county and state, residing therein, duly commissioned and sworn, personally appeared Natalie M. Kalmus, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

FLORENCE HARRIS
Notary Public in and for said county and state.
My Commission expires October 14, 1945
(Notarial Seal)

SCHEDULE "A"

The following located in the Bel Air Home:

1 Jug of Scotch—in projection room
All books in Suite of Natalie Kalmus
1 Taffeta quilted puff for chaise lounge
1 Pr. Crystal birds
1 Pr. Horn birds
1 Pr. Zebras
1 Pr. Crystal candy glasses
2 Silver footed crystal compotes (1 high—1 low)
1 Silver and crystal tea strainer
1 Set of 6 silver and crystal coasters
1—5 pc. White onyx desk set
1 Leather Box containing cards
1 Pr. Lenox urns—gold handles

1 Dutch girl cookie jar
4 Crystal and gold perfume bottles
3 Assorted glass flower holders
1 Make-up magnifying mirror
1 Baby pillow (old)
1 Pr. Green candlesticks place shades
Framed pictures (6) in Natalie Kalmus' room
2 Ironstone stand lamps and gold taffeta shades (taken 3/17/45 by Natalie Kalmus)
1 Lined peasant towel NK
1 Green metal (grape dec.) waste basket HTK
1 Music Box—powder puff container
1 Carved Wood Box
2 Onyx ash trays
1 Magolica Bowl (roses)
Leather Desk Pad
2 File Boxes
1 Radio
1 Silver plated cheese tray
3 Glass dishes
2 salt cellars, 1 spoon (1 cellar & 2 spoons missing)
2 Crystal, miniature decorated, cologne bottles
1 Reading glass—long magnifying
Desk—contents and appurtenances
Electric sewing machine (already taken by Natalie Kalmus)
Short wave machine
Vibrator
Sundry articles in basement belonging to Natalie Kalmus—including boxes of Natalie Kalmus's papers, boxes of Natalie Kalmus's clothing, old trunk and old suitcases.
Oxylene machine

All clothing in Natalie Kalmus's Suite
1 Duck Pin set
1 Ecru Pt. Venise banquet cloth—12 napkins
1 White Pt. Venise & Embr. banquet cloth and 12 napkins
1 Runner set Venice and Embr. block consisting of 1 Runner, 8 place mats, 6 napkins
1 Gray flat Venise Luncheon set (man in corner) NK
1 Embroidered Luncheon Set (Crusader design) HTK
All pieces of heavy ecru venise linen runners and doilies for bedroom suite
1 Royal Doulton elephant (taken 2/17/45)
1 Silver plated Urn for flowers HTK NK
Bedroom Set in Natalie Kalmus's room consisting of:
2 Beds, Springs and mattresses
3 Gold Taffeta Puffs
2 Green silk bedspreads
Chest of drawers—mirror on top
Dressing Table, bench and pad
Chaise Lounge and 2 pillows
2 Bedside tables
Cheval glass
1 Table with book shelves
3-panel screen
3 chairs
Cocktail bar with crystal set and contents—also extra crystal to match
All lamps in bedroom
1 Card Table
2 Mattress protectors
12 Bath Sheets (2 already taken)
12 Solid Blue Hand towels
5 Solid Blue Wash Cloths

2 Two-toned blue bath mats NK HTK
12 Solid Blue bath towels
2 Blue silk chenille bath room rugs
2 Seersucker spreads
2 Hemstitched baby pillow slips
4 Embroidered baby pillow slips
3 Old green striped Pillow slips
2 Salmon Blankets
6 New Sheets
6 Face Towels—Linen (new in box)
6 Guest towels— " " " "
8 Used Pillow slips
8 Used linen hand towels
2 Gold Wool Blankets
1 Old White wool blanket
11 Assorted old linen guest towels

The following located in the Centerville Home:

1 Porcelain and gold fruit dish
1 Crystal candy jar—blue and rose top
1 Cut glass water bottle
1 Plain etched water bottle
1 Perfume bottle—silver top initialed NMK
1 Silver nut dish and spoon
1 Silver and glass ice bowl and silver tongs
1 Tea Set (4 pieces silver) consisting of 2 sugar bowls, 1 Tea Pot, 1 Cream pitcher NK HTK
1 Set Coasters (silver and glass) 11 pieces—of which 1 piece cracked
1 Cocktail Set silver—consisting of 6 highball glasses with silver holders, 6 cocktail glasses, 1 cocktail shaker
1 Heavy rectangular silver tray
1 Chest of Silver in dining room

2 Beds (post spool beds) in South front bedroom

1 Deck (tall with bookcase) in front sewing room

1 Ladies Dresser, drawers and mirror in North front bedroom

1 Chest drawers in North front bedroom

1 Standing mirror in North front bedroom

1 Small Three circle table in North front bedroom

1 Small sewing stand in North front bedroom

1 Flat Cedar Chest containing miscellaneous clothes, pictures, papers, pocketbook, etc. in North front bedroom.

Miscellaneous clothes, shoes and books in North front bedroom.

1 Table Desk Mahogany in Charles' room—old house

1 Mahogany dresser with cracked glass—in barn

1 Mirror fancy beveled—hanging near window—3rd floor bedroom

5 Pr. old draperies formerly hanging in living room and library of old house—pink flowered linen.

NK
HTK

This Agreement made this 19th day of February, 1945, by and between Herbert T. Kalmus of Centerville, Massachusetts, and Natalie M. Kalmus of Los Angeles, California,

Witnesseth:

In consideration of Herbert T. Kalmus executing and delivering simultaneously herewith the agreement, a copy of which is hereto annexed, Natalie M. Kalmus agrees and covenants that

1. She will not interfere with Gwen E. Houser, now residing at Hyannis, Massachusetts, in any way or molest her in any manner whatever unless said Gwen E. Houser has previously interfered with or molested said Natalie M. Kalmus.

2. She further recognizes and agrees that any violation on her part of the provisions of paragraph 1 above shall constitute a breach of the said agreement simultaneously executed herewith.

In Witness Whereof the parties have hereunto set their hands and seals the day and year first above written.

Executed in duplicate.

Signed in the presence of:

LEON COHEN	NATALIE M. KALMUS
DAVID S. SHATTUCK	HERBERT T. KALMUS

(Verification.)

(AFFIDAVIT OF SERVICE BY MAIL—1013a, C. C. P.)

State of California, County of Los Angeles—ss.

William F. Clements, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the county of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within above entitled action; that affiant's business address is 808 Security Bldg., Los Angeles 13, California; that on the 5th day of November, 1948, affiant served the within Answer on the plaintiff in said action, by placing a true

copy thereof in an envelope addressed to the attorney of record for said plaintiff at the office address of said attorney, as follows:

"Mr. Max M. Gilford,
1217 Taft Building,
Los Angeles 28, California;

and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is delivery service by the United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

WILLIAM F. CLEMENTS.

Subscribed and sworn to before me this 5th day of November, 1948.

(Seal) CAROLYN HULL,
Notary Public in and for the County of Los Angeles, State of California.

(Endorsed): Filed Nov. 5, 1948. W. G. Sharp, County Clerk; By K. Meachem, Deputy.

(Title of Court and Cause)

No. D370515

ANSWER OF DEFENDANT, TECHNICOLOR MOTION PICTURE CORPORATION, A Corporation.

Comes now the defendant, TECHNICOLOR MOTION PICTURE CORPORATION, a corporation, and answering the complaint on file herein for itself alone, and for no other defendants, admits, denies and alleges as follows:

I.

Answering paragraph I of the first cause of action, this answering defendant admits that Technicolor Motion Picture Corporation is a duly organized and existing corporation. As to all other allegtions in said paragraph, this answering defendant alleges that it has no information or belief sufficient to enable it to answer the same, and on that ground denies, generally and specifically, each and every such allegation.

II.

Answering paragraphs II, III, IV, V, VI, VII and VIII of the first cause of action, this answering defendant alleges that it has no information or belief sufficient to enable it to answer the allegations of said paragraphs, and on that ground denies, generally and specifically, each and every allegation contained in said paragraphs.

III.

Answering paragraph IX of the first cause of action, this answering defendant denies, generally and specifically each and every allegation of said paragraph insofar as the same relate to this answering defendant, except that this answering defendant admits that it is not the alter ego

of defendant, Herbert T. Kalmus. As to all other allegations in said paragraph IX, this answering defendant alleges that it has no information or belief sufficient to enable it to answer the allegations set forth in said paragraph IX, and on that ground denies, generally and specifically, each and every allegation therein contained.

IV.

Answering paragraph X of the first cause of action, this answering defendant admits that defendant, Herbert T. Kalmus, is an officer and employee of this answering defendant, and receives salary and remuneration and certain traveling and living expenses away from home, and other allowable business expenses in connection with his services rendered for this answering defendant. Except as expressly admitted in the preceding sentence, this answering defendant alleges that it has no information or belief sufficient to enable it to answer the allegations set forth in said paragraph X, and on that ground denies, generally and specifically, each and every allegation therein contained.

V.

Answering paragraph XI, XII, XIII and XIV of the first cause of action, this answering defendant alleges that it has no information or belief sufficient to enable it to answer the allegations of said paragraphs, and on that ground denies, generally and specifically, each and every allegation therein contained.

VI.

Answering paragraph I of the second cause of action, this answering defendant hereby refers to the admissions, denials and allegations contained in its answer to paragraphs I to XII, inclusive, and paragraph VIV of the

first cause of action, and hereby incorporates by this reference the admissions, denials and allegations of this answer to said paragraphs as though the same were fully set forth at this point.

VII.

Answering paragraph II of the second cause of action, this answering defendant alleges that it has no information or belief sufficient to enable it to answer the allegations set forth in said paragraph, and on that ground denies, generally and specifically, each and every allegation therein contained.

VIII.

Answering paragraph I of the third cause of action, this answering defendant hereby refers to the admissions, denials and allegations contained in its answer to paragraphs I to XII, inclusive, and paragraph XIV of the first cause of action, and hereby incorporates by this reference the admissions, denials and allegations of this answer to said paragraphs as though the same were fully set forth at this point.

IX.

Answering paragraphs II and III of the third cause of action, this answering defendant alleges that it has no information or belief sufficient to enable it to answer the allegations therein contained, and on that ground denies, generally and specifically, each and every allegation therein contained.

X.

Answering paragraph I of the fourth cause of action, this answering defendant hereby refers to the admissions, denials and allegations contained in its answer to paragraphs I to VII, inclusive, IX to XII, inclusive, and paragraph XIV of the first cause of action, and hereby incorporates by this reference the admissions, denials and allegations of this answer to said paragraphs as though the same were fully set forth at this point.

XI.

Answering paragraph II of the fourth cause of action, this answering defendant denies, generally and specifically, that plaintiff has any interest or claim whatsoever in or to the development, exploitation or ownership of the Technicolor process, or any other processes employed by this answering defendant or in which this answering defendant has an interest. As to the other allegations contained in said paragraph II of the fourth cause of action, this answering defendant alleges that it has no information or belief sufficient to enable it to answer said allegations, and on that ground denies, generally and specifically, each and every such allegation.

XII.

Answering paragraphs III, IV, V, VI and VII of the fourth cause of action, this answering defendant alleges that it has no information or belief sufficient to enable it to answer the allegations therein set forth, and on that ground denies, generally and specifically, each and every allegation contained therein.

Wherefore, This answering defendant prays that plaintiff take nothing against this answering defendant, for costs of suit, and for such other and further relief as to the Court may seem proper.

LAURENCE M. WEINBERG
Attorney for defendant, Technicolor Motion Picture Corporation, a corporation.

(Verification).

(AFFIDAVIT OF SERVICE BY MAIL—1013a, C. C. P.)

State of California, County of Los Angeles—ss.

MADELYN B. DEWHURST, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the county of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within above entitled action; that affiant's business address is 215 West Fifth Street, Los Angeles 13, Calif., that on the 14th day of February, 1949, affiant served the within Answer to cross-complaint on the defendant and cross-complainant in said action, by placing a true copy thereof in an envelope addressed to the attorney of record for said defendant and cross-complainant at the office address of said attorney, as follows:

"Frank B. Belcher
Attorney at Law
510 South Spring Street
Los Angeles 13, California";

and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed or/and there is a regular communication by mail between the place of mailing and the place so addressed.

MADELYN B. DEWHURST.

Subscribed and sworn to before me this 15th day of February, 1949.

(Seal) DAVID L. SEFMAN

Notary Public in and for the County of Los Angeles, State of California.

(Title of Cause.)

D-370-515

MEMO OF DECISION

The order to show cause having heretofore been heard, argued and submitted, the Court now makes the following findings and order:

The Court finds that the plaintiff has accepted support from the defendant since the entry of the Massachusetts divorce decree, that plaintiff has accepted the benefits of the 1945 contract and has failed to return the benefits to defendant or to give notice of rescission of said contract. For the purposes of this hearing the contract of 1945 is found to be a valid contract. The Court finds that there was no reconciliation between the parties and that the plaintiff has failed to establish the relationship of husband and wife between the parties by a preponderance of the evidence. Alimony pendente lite, attorneys fees and costs are denied.

ELMER D. DOYLE
Judge.

(Endorsed.)

Filed Dec. 10, 1948. W. G. Sharp, County Clerk; By T. Kurtz, Deputy.

EXHIBIT "B"

Commonwealth of Massachusetts, Norfolk, SS., Superior Court in Equity.

Natalie Kalmus vs. Herbert Kalmus.

PETITION TO VACATE DECREE

Respectfully Represents Natalie Kalmus, Your Petitioner, as Follows:

1. That your Petitioner is now residing in Boston in this Commonwealth; that the Respondent is a resident of Centerville, in the County of Barnstable in this Commonwealth.

2. That your Petitioner was married to the Respondent at Templeton, Massachusetts on July 23, 1902.

3. That on October 24, 1921, your Petitioner filed a libel for divorce against the Respondent in the Court, which libel was given docket number 2575, and on December 22, 1921, a decree nisi was entered by this Court on the aforementioned libel, granting your Petitioner a divorce from the Respondent.

4. That within a day or two after the entry of the decree nisi, the Respondent communicated with your he Petitioner; he asked her for her forgiveness and stated ^ that desired a reconciliation; he informed your Petitioner that the divorce decree would not become final until some time in the future and that he would see to it that the

divorce decree did not become final; he informed her that it would not be necessary for her to consult with her attorneys as he would have his attorneys prevent the divorce decree from becoming final; he further stated to your Petitioner that the resumption of the marital relation between the Petitioner and Respondent would make the vacation of the decree a mere formality and that his attorneys would see that the formality was complied with.

5. That the Respondent did not, at the time of making these statements, intend to take any steps to prevent the entry of a final decree; that he intended to deceive your Petitioner by the statements which he made to her and he intended to cause her to resume marital relationships, well knowing that the divorce decree would become final.

6. That in reliance upon the statements made by the Respondent, your Petitioner on or about December 24, 1921 resumed marital relations with the Respondent; that your Petitioner and the Respondent have lived openly and notoriously as husband and wife since said date until 1944.

7. That your Petitioner was informed by the Respondent and she believed that the decree of divorce was vacated and that a final decree was never entered; and she was informed and believed that her original marital status had been revived and resumed and that the whole divorce proceeding was nullified.

8. That on June 22, 1922, the decree nisi became final; that the Respondent did not take any steps to prevent the entry of said final decree; that said final decree was en-

tered at a time when your Petitioner and Respondent were living together as husband and wife and were holding themselves out to the world as being husband and wife; that the Respondent has perpetrated a fraud upon this Honorable Court by knowingly allowing a final decree of divorce to be entered at a time when he had induced your Petitioner to resume marital relations with him and at a time when he was living openly and notoriously as husband and wife with your Petitioner, and at a time when he knew that your Petitioner was relying upon him to prevent the entry of a final decree.

9. That your Petitioner has only recently learned of her rights.

10. That your Petitioner does not have an adequate remedy at law and unless equitable relief is granted to her, irreparable damage will result.

Wherefore, Your Petitioner Prays:

1. That the decree entered on December 22, 1921 in case number 2575 be vacated and the libel be dismissed.

2. For such other and further relief as to this Honorable Court seems just and meet.

By her attorneys.

(Title of Court and Cause.)

No. D-370515

AFFIDAVIT

State of New York, County of Suffolk—ss.

GEORGE F. LEWIS, being first duly sworn, on oath deposes and says:

I am a member of the Bar of the State of New York and of the United States Supreme Court. I maintain an office for the general practice of my profession at 15 Broad Street, New York, N. Y.

I have known Natalie Kalmus for many years and the last time I spoke to her was on January 10, 1949 when she spent the entire day at my office while depositions were being taken in this litigation.

On Thursday, May 19, 1949, I was advised that Natalie Kalmus was staying at the Hotel Chatham, 39 East 48th Street, New York City, and was planning to leave that evening for Boston on the Merchants Limited of the New York, New Haven and Hartford Railroad. I checked with the Hotel Chatham and found she was registered there in Room 214.

Accordingly, my secretary, Helen Hughes and I went to Grand Central Station the afternoon of May 19, 1949. We arrived at the station at 4:25 P. M. (E. D. S. T.) and entered through the Hotel Biltmore entrance. As we entered the upper level of the station I noticed Natalie Kalmus immediately ahead of us, she having come down

the steps from the Vanderbilt Avenue entrance. She was walking alone, in her usual sprightly manner, and was wearing a blue suit and a straw hat. I saw her go to the gate of the Merchants Limited, which was scheduled to leave at five O'clock (E. D. S. T.). When the gates were opened I saw Natalie Kalmus go down to the platform alone and although Miss Hughes and I waited there until the train had left she did not come out.

GEORGE F. LEWIS.

Subscribed and sworn to before me this 25th day of May, 1949.

(Seal) FRANK J. TUMA

Frank J. Tuma

Notary Public, Suffolk County, New York.

No. 2079.

Commission expires March 30, 1951.

(Endorsed): Received copy of the within Affidavit this 31st day of May, 1949, David L. Sefman, Attorney for Plaintiff.

Filed May 31, 1949, Harold J. Ostly, County Clerk. By E. L. Mix, Deputy.

(Title of Court and Cause.)

No. D-370,515

AFFIDAVIT

State of New York, County of New York—ss.

DOMINICK SACO, being first duly sworn, on oath deposes and says:

I live at 37-15 81st Street, Jackson Heights, County of Queens, State of New York.

I am employed as a private investigator by the Schindler Bureau of Investigation, 7 East 44th Street, New York, N. Y.

I have been designated to follow Natalie M. Kalmus several times and have, therefore, seen her on numerous occasions. I have positively identified her from her pictures and, further, I have heard her addressed by name by the desk clerk at the Barclay Hotel, 111 East 48th Street, New York, N. Y.

At 10:45 A. M. on Thursday, May 19, 1949 pursuant to the instructions of a client, I took up observation in the vicinity of the Hotel Chatham, 39 East 48th Street, New York, N. Y., it having been learned that Natalie Kalmus was occupying Room 214 at this hotel.

Natalie Kalmus came into the lobby of the Hotel Chatham from one of the elevators at 12:40 P. M. She walked out of the 48th Street exit of the hotel, boarded a taxicab, and was driven to the Hotel Beekman Towers, 7 Mitchell Place, where she alighted and entered at 12:50 P. M.

Shortly thereafter, I observed Natalie Kalmus entering the main dining room of this hotel in the company of a

man. He took her to a table where there was a group of eleven men and women seated and her escort introduced her to this group. They then took seats at the same table.

At 2:20 P. M. I saw Natalie Kalmus leave the Hotel Beekman Towers in the company of another man. They walked to First Avenue and 49th Street, entered a taxicab and were driven west. Between Lexington and Park Avenues the man alighted from the cab and Natalie Kalmus continued in the cab to 57th Street and Madison Avenue, where she alighted and ran through the moving traffic to the north side of the street and entered the French Bootery at 19 East 57th Street, at 2:45 P. M.

Twenty-five minutes later, at 3:10 P. M., Natalie Kalmus came out of the French Bootery, crossed to the south side of 57th Street through heavy moving traffic, entered a taxicab and was driven to the Hotel Chatham, which she entered at 3:20 P. M.

At 4:20 P. M. I saw Natalie Kalmus come out of the Hotel Chatham, accompanied by a porter who carried a large tan bag and a small tan bag. The doorman obtained a taxicab, which she entered with her luggage. She was driven to the Vanderbilt Avenue entrance to Grand Central Terminal. There she alighted. She entered the station and walked down to the gate to Track 26, from which track the Merchants Limited of the New York, New Haven & Hartford Railroad was scheduled to leave for Boston, Massachusetts, at 5:00 P. M. A few moments later the gate to Track 26 was opened and she boarded the Merchants Limited, entering car 264 and occupying seat No. 30. After making certain that her luggage had been placed aboard the train, she left her seat and walked into the diner.

Natalie Kalmus was still on board the Merchants Limited when it left Grand Central Station on schedule at 5:00 P. M.

Throughout the entire time outlined in this affidavit I was accompanied by Bradley Mortimer, who lives at 15 West 68th Street, New York, N. Y., and who is also a private investigator employed by the Schindler Bureau of Investigation.

All the times mentioned in this affidavit are Eastern Daylight Saving Time:

DOMINICK SACO.

Subscribed and sworn to before me this 25 day of May, 1949.

(Seal) LILLIAN C. TRUEG
Lillian C. Trueg
Notary Public, State of New York.

No. 41-4026600 Qual. in Queens Co., Cert. filed with N. Y. Kings, Bronx County Clerks and Registers.

Term expires March 30, 1951.

(Endorsed): Received copy of the within Affidavit this 31st day of May, 1949. David L. Sefman, Attorney for Plaintiff.

Filed May 31, 1949. Harold J. Ostly, County Clerk. By E. L. Mix, Deputy.

(Title of Court and Cause.)

No. D-370-515

AFFIDAVIT

State of New York, County of New York—ss.

HELEN HUGHES, being first duly sworn, on oath deposes and says:

I live at 197 Calyer Street, County of Kings, State of New York.

I am Secretary to Mr. George F. Lewis of the law firm of Lewis, Welch & MacDonald of 15 Broad Street, New York, N. Y.

I have seen Natalie M. Kalmus on several occasions. On January 10, 1949, she spent the entire day at Mr. Lewis' office while depositions were being taken.

On Thursday, May 19, 1949, I accompanied Mr. Lewis to Grand Central Station, New York City. We arrived at the station at 4:25 P. M. (Eastern Daylight Saving Time) entering through the Hotel Biltmore. As we entered the main part of the station I observed Natalie Kalmus directly preceding us. She was wearing a blue suit and a natural straw hat with brown and green ribbons hanging down the back.

Natalie Kalmus went over to the gate of the track on which the Merchants Limited was scheduled to leave for Boston at 5:00 P. M. (E. D. S. T.). I noticed that she stopped in front of the gate and talked to a gentle-

man. In a moment a railroad guard opened the gate to allow the waiting passengers to get on the train and she went through the gate alone.

I waited until after the Merchants Limited had departed for Boston and I did not see Natalie Kalmus return through the gate.

HELEN HUGHES.

Subscribed and sworn to before me this 25th day of May, 1949.

(Seal) HAROLD F. VAN WICKLEN
Harold F. Van Wicklen
Notary Public, State of New York.

Qualified in Kings County, Kings Co. Clk.'s No. 630, Reg. No. 148-V-O. Certificates filed in N. Y. Co. Clk.'s No. 252, Reg. No. 216-V-O.

Commission Expires March 30, 1950.

(Endorsed): Received copy of the within Affidavit this 31st day of May, 1949. David L. Sefman, Attorney for Pltff.

Filed May 31, 1949. Harold J. Ostly, County Clerk. By E. L. Mix, Deputy.

In the Superior Court of the State of California, in and for the County of Los Angeles.

Natalie M. Kalmus, Plaintiff, vs. Herbert T. Kalmus, 370515

Defendant No. D-~~364392~~.

AFFIDAVIT RE PLAINTIFF'S MOTION FOR A CONTINUANCE

Commonwealth of Massachusetts, County of Suffolk—ss.

SUMNER H. BABCOCK, being first duly sworn, on oath deposes and says:

1. I live in Wellesley, Massachusetts, and I am a partner in the firm of Bingham, Dana & Gould, attorneys, with offices at One Federal Street, Boston, Massachusetts. We represent Dr. Herbert T. Kalmus.

2. On April 5, 1949, there was a hearing on a motion filed in the case brought by Natalie M. Kalmus against Herbert Kalmus in the Superior Court for Norfolk County, Massachusetts. After the hearing, while I was riding back to Boston in Mr. Aronson's car with him and Mrs. Natalie M. Kalmus, he asked me if I would consent to having the Massachusetts case heard in Boston, which is in Suffolk County, since it could not be heard in Dedham, which is in Norfolk County where the case is pending, until next Fall. I replied that I would not consent and said that it seemed better to me to dispose of the California case first. He said he desired to dispose of the Massachusetts case first.

3. Under date of April 20, 1949, we received notice that Mr. Aronson had filed a motion to have the case heard in Suffolk County. The next session of the Court at Dedham sitting jury-waived will be in next September.

Because there was no Motion Session in Norfolk County at the time, his motion was heard at Boston on Friday, April 29, 1949. He argued that the Massachusetts case should be decided before the California case. I opposed the motion. The Court denied the motion.

4. On Friday, May 27, 1949, I telephoned to Dr. Lowrey Davenport of Boston, Massachusetts, relative to his affidavit which had been filed in the California case and relative to Natalie M. Kalmus' hospital record in the Baker Memorial Hospital division of the Massachusetts General Hospital, Boston, Massachusetts. He said that he was confused relative to her condition; that it was difficult to say how much of her trouble was functional and how much was organic; and that she had insisted on leaving the Hospital on May 3, 1949.

SUMNER H. BABCOCK.

Subscribed and sworn to before me this 27th day of May, 1949.

(Seal) G. H. SHORT
Notary Public.

My commission expires: October 27, 1950.

(Endorsed): Received copy of the within Affidavit this 31st day of May, 1949. David L. Sefman, Attorney for Pltff.

Filed May 31, 1949. Harold J. Ostly, County Clerk. By E. L. Mix, Deputy.

(Title of Court and Cause.)

370515
No. D-~~364392~~

AFFIDAVIT RE PLAINTIFF'S MOTION FOR A CONTINUANCE

Commonwealth of Massachusetts, County of Suffolk—ss.

HARRY L. KOZOL, being first duly sworn, on oath deposes and says:

1. I live at 35 Kenilworth Street, Newton, Massachuchusetts. I am a doctor. My office is at 115 Bay State Road, Boston, Massachusetts. I was educated at Harvard College and Harvard Medical School and took my medical internship at the Massachusetts General Hospital until 1936. I did post-graduate work in psychiatry at the Boston Psychopathic Hospital and Johns Hopkins Hospital. While at Johns Hopkins Hospital, I was on a Rockefeller Foundation scholarship. From September, 1938 to September of 1939, I was graduate assistant in p*h*sychiatry at the Massachusetts General Hospital, Boston, Massachusetts, and from that time I have been in private practice in Boston. At present, I am visiting neurologist at the Boston City Hospital, and Clinical Associate at the Harvard Medical School.

2. I have examined the abstract of the record of the Baker Memorial division of the Massachusetts General Hospital referring to one Mrs. Natalie Kalmus of 266 Dean Road, Brookline, Massachusetts, age 67, Protestant, admitted April 29, 1949 and discharged May 3, 1949, a photostatic copy of which is hereto attached. In my opinion, based upon a study of this abstract, there is no medical reason why Mrs. Natalie Kalmus cannot travel

to California at this time and participate in a court trial or any other legal or business procedure.

3. My reasons for this opinion are as follows: The abstract shows that this patient was studied and treated from April 27 to May 3, 1949, in the course of which a history was provided by the patient, thorough physical and neurological examinations were done, her urine was studied, blood count and chemistry performed and X-rays of the skull and gastro-intestinal tract were made.

4. The history as given indicates a personality which is likely to complain out of proportion to the existence of actual medical disease. The patient is said to have gained weight from late 1947 and to have maintained a weight of 120 "despite vomiting" which is said to occur "almost daily for the past five to six months."

5. The only positive finding was a mildly elevated blood pressure, and "An incidental finding is irregular sclerosis and cortical thickening of the left ilium and the left side of the sacrum. Question of Paget's disease." Paget's disease is a common metabolic disorder in which one or more bones tend to develop thinned out areas with associated or compensatory overgrowth of bone. In general it is an essentially benign condition. When there is overactivity in bone formation the phosphatase in the blood is likely to be elevated.

6. The low specific gravity of the urine is inconsequential without knowledge of her previous intake of fluids. However, the fact that there is no indication that

the nitrogen content of her blood was evaluated indicates that there was no kidney problem. Furthermore, there is no bile in the urine nor any blood chemical test such as icteric index, both of which surely would have been done if there had been any justifiable suspicion of liver disease. There is no reference to liver disease in the abstract.

7. There was nothing in the entire gastro-intestinal tract which would indicate any organic trouble.

8. Taking all of the details in the Hospital record together the following conclusions emerge: (1) This patient is not suffering from any substantial, critical or incapacitating disease. (2) Her complaints are grossly disproportionate to any of the findings. These views are supported by the final sentences in the abstract which read as follows: "The history makes less sense today than ever. There is a large functional overlay."

9. Reference is now made to the affidavit of Dr. Lowery F. Davenport, M. D. in which he states that Mrs. Natalie Kalnins "was discharged with the diagnosis of hypertension—mild, question of Meniere's disease, hepatitis—cause undetermined.

10. The questionable Meniere's disease refers to the possibility of recurrent dizziness being due to some trouble in the ears. This patient does not have Meniere's disease, but even if she did have it, it would be no barrier to traveling and participating in legal business. The mild Paget's diseases was an incidental X-ray finding and is not in the least incapacitating. Hepatitis is not supported

by the abstract, and is something which certainly could have been settled while the patient was in the Hospital. If this patient is too sick to make a transcontinental trip she was certainly too sick to be permitted to leave the Hospital before all questions in the doctor's mind were cleared up.

11. In consideration of all the above it is my opinion that this patient is medically able to make a transcontinental trip and participate in any legal or business matters.

HARRY L. KOZOL.

Subscribed and sworn to before me this 28th day of May, 1949.

(Seal) SUMNER H. BABCOCK

Notary Public.

My Commission expires: January 19, 1956.

(Endorsed): Received copy of the within Affidavit this 31st day of May, 1949. David L. Sefman, Attorney for Platff.

Filed May 31, 1949. Harold J. Ostly, County Clerk. By E. L. Mix, Deputy.

Massachusetts General Hospital
Boston 14

IN BOSTON
GENERAL HOSPITAL
BAKER MEMORIAL
PHILLIPS HOUSE
LINCOLN HOSPITAL
NEW ENGLAND MEMORIAL HOSPITAL
DANIEL W. FACEN, M.D.
DIRECTOR

IN WAVERLEY
MCLEAN HOSPITAL
W. FRANKLIN WOOD, M.D.
DIRECTOR

May 26, 1949
Unit No: 660787

Abstract Of The Record Of: Natalie Kalmus
266 Dean Road
Brookline,
Mass.
Age: 67 at that time Marital Status: M.

Admitted to Baker Memorial Hospital
Discharged: May 3, 1949
Diagnosis: (1) Paget's Disease
(2) Question of Meniere's Disease

Admission Note: This is the first Baker Memorial admission of this 67 year old white married female entering with a diagnosis of: Brain Tumor.

Chief Complaint: Headaches, dizziness, and tinnitus.

Present Illness: The patient has had various and sundry ailments throughout her life.

Ten months ago, she first noted the onset of sore deep headache in frontal and occipital regions which was intermittent, relieved by codeine and which has become worse in the past few days. Previous to this there might be several days free from pain which would then recur. She cannot take aspirin because its effect on her heart. Pain is perhaps worst over left eye brow.

For the past four to five days, all symptoms have been exaggerated and she has noted some tenderness behind her ears and in her neck which was slightly stiff. Over this interval she has had severe dizziness, a sensation described as if things were moving away from her without vertigo. Dizziness is accompanied by nausea and vomiting and retching for long periods. If is difficult to evaluate the nausea because she has been nauseated for several years off and on ever since eating poor food for several years in England. She has been vomiting almost daily for the past five to six months. Because of malnutrition patient lost weight from 132 to 108, when she returned to USA in late 1947, she has gained to 120 which she has maintained despite vomiting. Appetite has been good. Seven days ago she hit her vertex on a table but did not lose consciousness and it is difficult to pin her later symptoms on a progression from this.

There have been no convulsions, paralysis, difficulty with speech, or coordination, no numbness or tingling except slight in left fourth or fifth fingers, no diplopia, slight blurring of vision for past four to five days, no change in hearing.

Patient has received inconstant treatment with thyroid, pituitary hormones and vitamins. Referred in for evaluation.

BEST COPY AVAILABLE

Physical Examination: Patient is a well developed and nourished, well preserved, extremely intelligent elderly woman, occasionally taking sighing respirations, and complaining at times of pain in head.
Neurological Examination: Fundi could not be observed, pin point pupils. Pupils miotic, regular and equal, react to light and accommodation, extra ocular movement full, no significant nystagmus. Fields confrontation. Corneals normal.
Neck negative.
Motor: Power O.K., no atrophy, no dysdiadochokinesis, Finger to Nose, Heel to Shin, tests done well, no past pointing or returned.
Reflexes active and equal; Plantars ↓; O Hoffmann; Abdominals absent.
Sensory: Corneals, touch and position intact.
Blood pressure: 210-180/110-120; Veins flat, heart normal.
Liver felt and percussed down 1 finger breadth on inspiration, spleen descends 2 finger breadths on spiration and is moderately tender.

28, Urine Examination: Color: light amber. Reaction: acid. Specific Gravity: 1.010. Sediment: Rare wbc and epithelial cells.

28. Specimen of Blood: Wbc 6,700.

29, X-Ray Skull: The left internal acoustic meatus appears to be larger than the right canal and there is the barest suggestion of erosive change at the pores acousticus. The skull is not otherwise remarkable. The pituitary fossa is intact. The asymmetry described in the petrous ridges could be on the basis of an acoustic neurinoma. The changes, however, are not of sufficient severity to be pathognomonic.

28. Specimen of Blood: Calcium: 9.6 mgs%
Phosphorus: 4.3 mgs%
Phosphatase: 8.7 units %

2. X-Ray Gastro-Intestinal Series: The esophagus showed no abnormality. Rugae of the stomach were regular and peristalsis was active. No defects were seen in the gastric or duodenal wall. An incidental finding is irregular sclerosis and cortical thickening of the left ilium and the left side of the sacrum. Question of Paget's disease.

1. Gastro-intestinal series negative. X-ray and phosphatase consistent with Paget's disease. The history makes less sense today than ever. There is a large functional overlay.

1. Patient discharged today.

****

No further entry in record.

F. Kraus Jr.

Assistant Director

BEST COPY AVAILABLE

(Title of Court and Cause.)

370515

No. D-~~364392~~

AFFIDAVIT RE PLAINTIFF'S MOTION FOR A CONTINUANCE

Commonwealth of Massachusetts, County of Suffolk—ss.

JOSEPH DECKER, being first duly sworn, on oath deposes and says:

1. I live in Brookline, Massachusetts, and own and operate a detective agency. On Friday, May 13, 1949, after receiving instructions from Bingham, Dana & Gould, including photographs of Natalie Kalmus, I went to one of the Boston newspapers and obtained further pictures of her.

2. On Saturday, May 14, 1949, at 6:40 p. m., I went to the house at 266 Dean Road, Brookline, Massachusetts, where Mrs. Hazel M. Sawyer lives. The house is assessed to her at $19,700, and she pays a personal tax on $2,000 of personal property, according to the records at the Brookline City Hall. About 8:15 p.m. the porch light over the front door was lighted and at 8:35 p. m. a taxicab drove up to the door with a woman passenger, whom I identified as Natalie Kalmus. She was about 5'4" high, weighed about 110-120 pounds, was wearing a dark suit and shoes, a light straw hat with a veil or *or* streamers down the back. She was carrying a small bag and a coat over her arm. She left the cab, walked up the steps and a door was opened by some woman from inside. Almost immediately the lights in the bedroom on the second floor were turned on and a door that leads from that bedroom out to an open porch was opened.

3. The taxicab turned around and I pursued the cab and finally caught it and asked the driver to stop. The cab driver informed me that he had picked up a man and two women at Park Square, Boston, and had left the man and one of the women at Pelham Hall, a hotel in Brookline, and had then proceeded to 266 Dean Road with the other woman. During the ride his passengers stated that they had been to the race track at Suffolk Downs, arriving at about the fifth race and the woman whom he carried to 266 Dean Road said she had won $20. She also said the maid would let her in when she arrived at 266 Dean Road.

4. On the evening of Sunday, May 15, the bedroom on the second floor was lighted and at about 8:50 p. m. a taxicab drove up to the door with two women and a man as passengers. While they were coming into the house and for some time thereafter, Natalie Kalmus continued to stay in her room on the second floor. The door of this room leading to the porch was open and through this door I saw very clearly her reflection in the mirror on what apparently was a bathroom door. She was washing in the bathroom adjacent to her room. Her auburn or reddish hair was clearly seen.

5. On Monday, May 23, at 10:55 a. m., I saw a gray Lincoln sedan being driven into the driveway at 266 Dean Road, and then I saw Mrs. Kalmus sitting in the front seat with the driver. The car backed out of Dean Road to Chestnut Hill Avenue and went to the Jennings Motor Company in Watertown, where the driver got out and a new driver got in. The car then went to the City Hall in Waltham, where Mrs. Kalmus left the car, crossed the street and entered the City Hall at 11:18

a. m. She came out of the building at 11:40 a. m. crossing the street laughing. She was wearing a blue suit, a brown straw hat with green streamers and veil. The car in which she was riding drove away and I lost it at a traffic light.

6. On Thursday, May 26, I observed her leave the house at 266 Dean Road, Brookline, Massachusetts, in the black Buick sedan registered in the name of Hazel M. Sawyer. She was driven by a woman to St. Mary's Street and Beacon Street, where she got out of the car alone. She went into a tailor's shop, Bernstein's, for a few minutes. Then she returned to the automobile and took a small package. The other woman remained behind the wheel. Then Mrs. Kalmus walked over to the subway reservation. The subway stops there and goes underground. She caught the subway. The subway car was crowded but she forced her way into it. She was wearing a blue and white plaid suit.

7. Each time that I saw Mrs. Kalmus she walked firmly, briskly and vigorously. She pushes through crowds in a way that makes it very hard to follow her, and I noticed nothing to indicate that she was not in good health.

JOSEPH DECKER.

Subscribed and sworn to before me this 27th day of May, 1949.

(Seal) SUMNER H. BABCOCK
Notary Public.

My commision expires: Jan. 19, 1956.

(Title of Court and Cause.)

No. D-364392

AFFIDAVIT RE PLAINTIFF'S MOTION FOR A CONTINUANCE

Commonwealth of Massachusetts, County of Suffolk—ss.

JOSEPHINE DECKER, being first duly sworn, on oath deposes and says:

1. I am the wife of Joseph Decker of Brookline, Massachusetts, who operates a detective agency.

2. I examined the pictures of Natalie Kalmus which Mr. Decker obtained from Bingham, Dana & Gould and from the Boston newspaper.

3. I was with Mr. Decker and saw Mrs. Kalmus arrive at 266 Dean Road, Brookline, Massachusetts, on Saturday night, May 14, 1949, at 8:35 p. m. I also saw her in her bedroom on the second floor of that house on Sunday night, May 15, 1949.

4. On Thursday, May 19, 1949, I was informed by Bingham, Dana & Gould that she was coming to Boston on the train from New York known as The Merchants Limited, which was due at Back Bay Station in Boston at 8:54 p. m. Daylight Saving Time. I went to meet that train and saw the black Buick sedan registered in the name of Mrs. Hazel M. Sawyer parked by the station. Sitting behind the wheel was the woman who also lives at 266 Dean Road, Brookline, Massachusetts. The train arrived about 8:54 p. m. The tracks are below the first floor level at Back Bay, and an elevator brings passengers up and into the station. I stood by one of these elevators. On the third trip, Mrs. Kalmus was on the elevator. She was wearing a dark blue suit and a light

straw hat with green and tan veiling in back and a veil around her face. She had a brown shoulder bag with a strap over her shoulder. She was not travelling with anyone, but was travelling alone. She stepped quickly off the elevator, sort of pivoted around as though she were looking for someone to meet her. She was met by the woman I had previously seen sitting in the black Buick sedan. This woman told her where the car was parked and left her. While Mrs. Kalmur was standing there, a man of middle age or older, tall, rather slim, spoke to her and she said "Hello, Dan." She pointed to the parking space and he left. She got her baggage and went out and got into the black Buick sedan, which was driven slowly to 266 Dean Road, Brookline. The car went into the garage and they took out the baggage. They then drove down the street and came back in about 5 minutes, put the car in the garage, and closed the garage doors.

5. On Friday, May 20, 1949, at 8:45 p. m., the lights in her room went on. The door leading from her room onto the porch was opened.

6. On Monday, May 23, 1949, at 2:00 p. m., I saw Mrs. Kalmus and a middle-aged woman seated in Box No. 4 at the Club House at Suffolk Downs, the race track in Boston, Massachusetts. The first race had just started and Mrs. Kalmus was very excited, standing up, and waving her hands as though she had bet on some horse. She played every race and went to the $2 window before each race and bought several tickets. I noticed her throw away the ones that did not win. There were quite a few tickets on the floor at her feet. At 3:00 p. m. Mrs. Kalmus and the other woman went into

the dining room at the Club House and I followed them in. They sat down, ordered something to eat and looked over the racing forms and talked together. Then they went back to Box No. 4. After the sixth race Mrs. Kalmus left. This was at 4:20 p. m. She was alone. She took a street car from the track. I sat in the seat behind her. I observed that she was reading birth certificates dated May 23, 1949, Waltham, Massachusetts. She had three of them. The name on one was Ransom LaForest, January 18, 1897, and another was Thelma Edna Dunfee, 61 High Street, Waltham, Massachusetts. When we arrived at Maverick Square, East Boston, she asked me if this was the way to Scollay Square and I replied yes. She got on the subway and I did too. Quite a few people got off at Devonshire Street and she did too. I followed her off. She seemed bewildered. We were the only ones standing on the station platform. I said to her that I had made a mistake and thought it was Scollay Square, and she replied that she had also. She took another train and rode to the next stop, which was Scollay Square. I did the same. She then got onto a Beacon Street trolley car, which is the car that goes to Cleveland Circle and is the nearest car to 266 Dean Road. I got on the same car. I left the car shortly before Cleveland Circle, and she was still on the car.

7. On Thursday, May 26, 1949, I was with Mr. Decker and saw Mrs. Kalmus leave the house at 266 Dean Road, Brookline, Massachusetts, in the black Buick sedan registered in the name of Hazel M. Sawyer. I saw her driven to St. Mary's Street and Beacon Street, where she got out of the car alone and went into Bernstein's, the tailor shop. Then she went over to the car

and took out a package, which she carried with her. She then walked over to the subway stop and took the subway. The subway car was crowded but she forced her way into it and I did likewise. She got off the subway at Park Street, went into Sawyer's Store on Tremont Street, Boston, where she left the package. Then she went to The First National Bank of Boston branch on Temple Place, Boston. There she took an elevator and I waited for her on the ground floor. She came back, left the bank, and started to walk along the street when she stopped and looked over papers in her bag for several minutes. Then she turned around and went back to the branch of The First National Bank of Boston on Temple Place and again took the elevator. A short while later the elevator came back and she went out the door of the bank in a hurry and hailed a passing taxi. I lost her at this point. She was wearing a blue and white plaid suit.

8. Every time that I saw her she walked fast, and in a crowd she pushed her way right through it. I did not see anything to indicate that she was not in good health.

JOSEPHINE DECKER.

Subscribed and sworn to before me this 27th day of May, 1949.

(Seal) SUMNER H. BABCOCK
Notary Public.

My commission expires: Jan. 19, 1956.

(Title of Court and Cause.)

No. D-364392

AFFIDAVIT RE PLAINTIFF'S MOTION FOR A CONTINUANCE

Commonwealth of Massachusetts, County of Suffolk—ss.

FRANK BOHMBACH, being first duly sworn, on oath deposes and says:

1. I live in Boston, Massachusetts. I was employed by Joseph Decker to observe Natalie Kalmus. I first examined the pictures of her which Mr. Decker had. I was with Mrs. Josephine Decker on Thursday night, May 19, 1949, when Mrs. Kalmus came in from New York on The Merchants Limited at the Back Bay station. I saw her then at the station and I followed her in the car with Mrs. Decker to 266 Dean Road, Brookline, Massachusetts.

2. On Saturday, May 21, 1949, I observed Mrs. Kalmus at 2:45 p. m. in the Club House at Suffolk Downs, the race track at Boston, Massachusetts, sitting in Box No. 4 with a man and woman. I saw her go to the $2 window and get tickets for four or five races. Sometimes she went to the window alone, sometimes with the woman and other times with the man. At one time she went into the Club restaurant alone and stayed there about twenty minutes. She mingled very freely with the people. She was dressed in a dark blue suit, yellow shirtwaist and a natural colored straw hat with green and brown ribbon streamers. She wore tortoise shell glasses

when reading the racing sheet. I lost her after the seventh race. There was a very large crowd at the track that day.

3. She walked fast and shouldered her way through the large crowd without any trouble. I saw nothing to indicate that she was not in good health.

FRANK BOHMBACH

Subscribed and sworn to before me this 27th day of May, 1949.

(Seal) SUMNER H. BABCOCK
Notary Public.

My commission expires: January 19, 1956.

(Title of Court and Cause.)

No. D-364392

AFFIDAVIT RE PLAINTIFF'S MOTION FOR A CONTINUANCE

Commonwealth of Massachusetts, County of Suffolk—ss.

IRENE BOHMBACH, being first duly sworn, on oath deposes and says:

1. I am the wife of Frank Bohmbach. I live in Boston, Massachusetts. I was employed by Joseph Decker to observe Natalie Kalmus. I first examined the pictures of her which Mr. Decker had. I was with Mrs. Josephine Decker on Thursday night, May 19, 1949, when Mrs. Kalmus came in from New York on The Merchants Limited at the Back Bay station. I saw her then at the station and I followed her in the car with Mrs. Decker to 266 Dean Road, Brookline, Massachusetts.

2. On Saturday, May 21, 1949, I observed Mrs. Kalmus at 2:45 p. m. in the Club House at Suffolk Downs, the race track at Boston, Massachusetts, sitting in Box No. 4 with a man and woman. I saw her go to the $2 window and get tickets for four or five races. Sometimes she went to the window alone, sometimes with the woman and other times with the man. At one time she went into the Club restaurant alone and stayed there about twenty minutes. She mingled very freely with the people. She was dressed in a dark blue suit, yellow shirtwaist and a natural colored straw hat with green

and brown ribbon streamers. She wore tortoise shell glasses when reading the racing sheet. I lost her after the seventh race. There was a very large crowd at the track that day.

3. She walked fast and shouldered her way through the large crowd without any trouble. I saw nothing to indicate that she was not in good health.

IRENE BOHMBACH.

Subscribed and sworn to before me this 27th day of May, 1949.

(Seal) SUMNER H. BABCOCK

Notary Public.

My commission expires: January 19, 1956.

(Endorsed): Received copy of the within Affidavits this 31st day of May, 1949. David L. Sefman, Attorney for Plaintiff.

Filed May 31, 1949. Harold J. Ostly, County Clerk. By E. L. Mix, Deputy.

2 Civil No. 17,534

In the District Court of Appeal, State of California, Second Appellate District, Division One.

Natalie M. Kalmus, Plaintiff and Appellant, vs. Herbert T. Kalmus and Technicolor Motion Picture Corporation (a corporation), Defendants and Respondents.

EXCERPTS FROM APPELLANT'S PETITION FOR A REHEARING

Page 16, lines 5 to 25, inclusive: "It is quite apparent from its opinion that the Court failed to appreciate the only real legal issue raised by Appellant with regard to whether or not the trial Court committed an abuse of discretion in proceeding to determine the validity of the Massachusetts decree.

"At pages 47 to 51 of the Appellant's Closing Brief, we took particular pains to set forth Appellant's contention in this regard in the clearest terms we could find. Apparently we have failed to secure the Court's attention on this issue inasmuch as the opinion omits consideration of it entirely, failing to make the necessary legal distinctions in order to properly consider the matter.

"In simple terms, the question raised is this: 'Did the trial Court commit an abuse of discretion by proceeding to determine the validity of the Massachusetts decree in an uncontested proceeding when it had been advised that the Massachusetts court had already assumed to determine the question?' We raised no issue as to the power of the trial Court to proceed." . . .

2 Civil 17534, 17672, 17700

Kalmus v. Kalmus.

State of California, County of Los Angeles—ss.

I, J. E. BROWN, Clerk of the District Court of Appeal, Second Appellate District, State of California, do hereby certify that the preceding and annexed are true, and correct copies of certain documents appearing in the various Clerks' Transcripts on Appeal on file in the consolidated appeals as follows:

Answer of Defendant Herbert Kalmus and Exhibit A attached thereto. (17534)

Answer of Defendant Technicolor Motion Picture Corporation, a corporation. (17534)

Minute Order of Dec. 10, 1948 denying alimony, attorney fees and costs. (17672)

Petition to Vacate Decree which is portion of Exhibit B attached to affidavit of David H. Aronson on motion for continuance. (17534)

Following affidavits in opposition to plaintiff's motion for continuance:

George F. Lewis	(17534)
Dominic Saco	"
Helen Hughes	"
Sumner Babcock	(17700)
Harry Kozol	"
Joseph Decker	"
Josephine Decker	"
Frank Bohmbach	"
Irene Bohmbach	"

and an excerpt from page 16 of Appellant's petition for rehearing in this Court,

all as shown by the records of my office.

Witness my hand the Seal of the Court this 27th day of November, 1951.

J. E. BROWN, Clerk,
District Court of Appeal, Second Appellate District, State of California.